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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 222

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

BENNE KATZ, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In the Matter
of
BENNE KATZ, ALFRED FINKEL, and MURRAY KATZ, d/b/a
WILLIAMSBURG STEEL PRODUCTS COMPANY.

2-CA-5368

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4 16 57	Charge filed
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11 24 58	Respondent's motion for bill of particulars received
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12 2 58	General Counsel's opposition to motion for bill of particulars dated
12 9 58	Trial Examiner's order on motion for bill of particulars dated
1 5 59	Bill of particulars dated
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3 19 59	General Counsel's motion to correct transcript of proceedings received. (Granted)
7 13 59	Trial Examiner David London's Intermediate Report dated
8 17 59	Respondent's exceptions to the Intermediate Report received together with request for oral argument. (Oral argument request denied.)
1 22 60	Decision and Order issued by the National Labor Relations Board

Petition for Enforcement of an Order of the National Labor Relations Board.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

BENNE KATZ, ALFRED FINKEL, and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY, RESPONDENT.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*, as amended by 73 Stat. 519), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Benne Katz, Alfred Finkel, and Murray Katz, d/b/a Williamsburg Steel Products Company, Brooklyn New York, its officers, agents, successors and assigns, Case No. 2-CA-5368.

In support of this petition the Board respectfully shows:

(1) Respondent is engaged in business in the State of New York, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on January 22, 1960, duly stated its

findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 13 (g) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors and assigns to comply therewith.

/s/ MARCEL MALLET-PREVOST
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D. C.
this 18th day of May 1960.

Complaint and Notice of Hearing.

(GENERAL COUNSEL'S EXHIBIT 1C.)

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY,

and

ARCHITECTURAL & ENGINEERING GUILD, LOCAL 66, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO.

Case No. 2-CA-5368

It having been charged by Architectural & Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, herein called Local 66, 160 West 44th Street, New York, New York, that Benne Katz, Alfred Finkel and Murray Katz d/b/a Williamsburg Steel Products Company, herein called Respondent Employer, 59 Paidge Avenue, Brooklyn, New York, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director for the Second Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations—Series 7, Section 102.15, hereby

issues this Complaint and Notice of Hearing and alleges as follows:

1. A copy of the Charge in this proceeding was served by registered mail upon Respondent Employer on April 18, 1957.

2. Respondent Employer is, and has been at all times herein mentioned, a copartnership of Benne Katz, Alfred Finkel, and Murray Katz doing business under the trade name and style of Williamsburg Steel Products Company.

3. At all times herein mentioned, Respondent Employer has maintained its principal office and place of business at 59 Paidge Avenue Brooklyn, in the City of New York, State of New York, herein called the plant, and is now and has been continuously engaged at said plant and place of business in the manufacture, sale and distribution of hollow metal doors, bucks, and related products.

4. During the past year Respondent Employer, in the course and conduct of its business operations, caused to be manufactured, sold and distributed at said plant products valued at in excess of $200,000, of which products valued in excess of $100,000 were shipped from said plant in interstate commerce directly to states of the United States other than the State of New York.

5. Respondent Employer is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

6. Local 66 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. All technical engineering employees of the Respondent Employer's Engineering Department in its New York operation including estimators, technical clerks, designers, draftsmen, listers, schedulers, hardware coordinators, methods and/or process engineers, and other technical engineering employees doing similar work regardless of assigned classification, employed at its plant, exclusive of all other employees, specifically office clerical employees, production employees, salesmen, mechanics, teamsters, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

8. (a) On or about June 26, 1956, a majority of the employees of Respondent Employer in the unit described above in paragraph 7, by a secret election conducted under the supervision of the Regional Director for the Second Region of the National Labor Relations Board, designated or selected Local 66 as their representative for the purposes of collective bargaining with Respondent Employer, and on or about July 5, 1956, the Acting Regional Director for the Second Region of the National Labor Relations Board certified Local 66 as the exclusive bargaining representative of the employees in said unit.

(b) At all times material herein, Local 66 has been and is now the exclusive representative of all the employees in said unit described above in paragraph 7 for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

9. On or about July 11, 1956, Local 66 requested Respondent Employer to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms

and conditions of employment with Local 66 as the exclusive collective bargaining representatives of all the employees of Respondent Employer, as described above in paragraphs 7, 8 and 9.

10. Since in or about July 1956, and specifically since mid-October 1956, and at all times thereafter, Respondent Employer did refuse and continues to refuse to bargain collectively with Local 66 as the exclusive collective bargaining representatives of all the employees in the unit described above in paragraph 7, in that:

(a) In or about March 1957, and at various times thereafter to date, Respondent Employer unilaterally changed the terms and conditions of employment relating to sick leave of employees in the unit described above in paragraph 7.

(b) In or about April 1957, and at various times thereafter to date, Respondent Employer unilaterally changed existing wage rates and other terms and conditions of employment of employees in the unit described above in paragraph 7.

(c) Since in or about March 1957, and at various times thereafter to date, Respondent Employer bargained directly and individually with employees in the unit described above in paragraph 7, concerning rates of pay, wages, hours of employment, or other terms and conditions of employment.

(d) In or about June and July 1957, Respondent Employer, through its agents, supervisors or representatives, including Herbert Jacobson and others unknown, aided and assisted employees in the unit described above in paragraph 7 to repudiate Local 66 as their bargaining representative.

(e) In or about June, July and August 1957, and at various unknown times thereafter to date, Respondent Employer, in derogation of Local 66's representative status, through Respondent Employer's agents, supervisors or representatives including Jacobson, Wisniewski and others unknown, publicized, sponsored, approved, permitted, attended and participated in meetings on its premises of employees in the unit described above in paragraph 7.

11. By the acts described above in paragraph 10, and by each of said acts, Respondent Employer did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

12. By the acts described above in paragraph 10, and by each of said acts, Respondent Employer did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

13. The activities of Respondent Employer, described above in paragraph 10, occurring in connection with the operations of Respondent Employer, described above in paragraphs 2, 3, 4 and 5, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 20th day of October, 1958, at 1:30 p. m. EDST, in the Hearing Room, on the 24th floor, 2 Park Avenue, New York, New York, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the

allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, you shall file with the Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting Regional Director for the Second Region, on this 8th day of September, 1958, hereby issues for this Complaint and Notice of Hearing against Benne Katz, Alfred Finkel and Murray Katz d/b/a Williamsburg Steel Products Company, Respondents herein.

SAMUEL M. KAYNARD,
Acting Regional Director,
National Labor Relations Board.
2 Park Avenue,
New York 16, New York.

Answer.

(GENERAL COUNSEL'S EXHIBIT 1E.)

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY,

and

ARCHITECTURAL & ENGINEERING GUILD, LOCAL 66, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO.

Case No. -CA-5368.

Benne Katz, Alfred Finkel and Murray Katz, d/b/a Williamsburg Steel Products Company, answering the complaint herein, respectfully set forth to this Court as follows:

1. Deny each and every allegation contained in those paragraphs of the complaint numbered 7, 8(b), 9, 10, 10(a), 10(b), 10(c), 10(d), 10(e), 11, 12 and 13.

FOR A FIRST AFFIRMATIVE DEFENSE,

2. That the respondents heretofore attempted to bargain collectively and in good faith with the charging union herein, and that the representatives of the charging union, by their own affirmative acts and conduct, made further collective bargaining impossible and futile because of their

obstructive, unreasonable, unconstructive and adamant position and the inflexible position taken by them throughout these collective bargaining negotiations, and by affirmatively alienating away from themselves the membership of those persons in the collective bargaining unit claimed to be covered herein, and by the said employees disallowing and rejecting further collective bargaining representation by the charging union and advising the respondents affirmatively to that effect, and that by virtue of such impasse created by the affirmative acts and conduct on the part of the said charging union, and the position asserted by its own members, employees within the bargaining unit herein, the respondents were powerless to continue to negotiate any further, especially since in addition to the foregoing the charging union abruptly terminated all negotiations and created a serious incident which culminated in its abortively and precipitously terminating all collective bargaining negotiations with the respondents, and that by virtue of the premises the respondents have committed no unfair labor practices in a refusal to bargain herein.

FOR A SECOND AFFIRMATIVE DEFENSE,

3. That in the lapse of the period of approximately a year and a half between the acts and conduct of the charging union stated hereinabove in the affirmative defense, the filing of the instant complaint, the position of the respondents have been very seriously prejudiced, as has that of its employees, members of the bargaining unit herein, and that this proceeding has either become moot or barred by laches, resulting from this inordinately long period of time which has been permitted through no fault of the respond-

ents to intervene, albeit the respondents a long time ago pressed for an earlier disposition of this matter, and that the Board has permitted this proceeding to remain in a state of suspense to the prejudice of the respondents and the employees in the unit, and that the whole matter has become either moot or academic, because all of the employees have long since had no contact of any kind with the charging union herein.

FOR A THIRD AFFIRMATIVE DEFENSE,

4. By virtue of the affirmative acts and conduct of the charging union as aforementioned, and in view of the fact that it created a schism between itself and its own members, employees of the respondents as aforementioned, and in view of the fact that as a result of this schism so created the charging union has not for the period of approximately a year and a half represented as collective bargaining agent the said employees, and has been out of communication with them, and did not at the time of the filing of the charge herein, or at the instant time, represent collectively or otherwise as a bargaining unit the interest of those employees claimed to be represented by them hereunder.

WHEREFORE, the respondents above named pray for a dismissal of the complaint.

Dated: September 12, 1958.

RAPHAEL, SEARLES, LEVIN & VISCHI,
Attorneys for Respondents, Benne Katz, Alfred Finkel and Murray Katz, d/b/a Williamsburg Steel Products Company,

By SIDNEY O. RAPHAEL,
Member of the Firm.

Decision and Order.

On July 13, 1959, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief, and the General Counsel filed a brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Intermediate Report, the exceptions and the briefs,[1] and hereby adopts the findings, conclusions and recommendations of the Trial Examiner with the modifications and additions noted below.[2]

We agree with the Trial Examiner that the Respondent violated Sections 8 (a) (5) and (1) of the Act[3] by institut-

[1] The Respondent's request for oral argument is denied, as the record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

[2] As we find insufficient support in the record therefor, we do not adopt the statements in the Intermediate Report that (1) chief draftsman Halpern invited employee Langiulli into the former's office to look at a company pension plan, and (2) Halpern told employee Thibou that management had been working on a company contract for some time, that the contract contained a pension plan which the Union could not obtain for the men, and that the Union's Pioneer contract was not as good as the company contract. However, these findings of the Trial Examiner are not essential to our concurrence with the Trial Examiner's ultimate conclusions.

[3] See *N. L. R. B. v. Crompton-Highland Mills, Inc.*, 337 U. S. 217 (1949); *Armstrong Cork Company v. N. L. R. B.*, 211 F. 2d 843, 847 (C. A. 5, 1954); *Chambers Manufacturing Corporation*, 124 NLRB No. 94; *Bonham Cotton Mills, Inc.*, 121 NLRB 1235, 1236.

ing, during the Union's certification year and without notifying or consulting with the Union, the following unilateral action: (1) Granting merit increases in October, 1956, and January, 1957. (2) Changing sick leave policy on or about March 11, 1957. (3) Announcing a new automatic wage increase system in April, 1957.[4] We find no merit in the Respondent's contention that the existence of an impasse in the bargaining negotiations with the Union justified it in taking such unilateral action. Respondent in this connection asserts that the alleged impasse derived in part from the fact that the Union and another company in the industry entered into a collective bargaining agreement containing a "most favored nations" clause.[5] In the circumstances of this case, we reject this position.[6] For the evidence is clear that the Respondent undertook its unilateral actions before negotiations were discontinued in May, 1957, or before, as we find on the record, the existence of any possible impasse.

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the Na-

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[4] We construe the Intermediate Report as finding violations only with respect to the above specified unilateral acts. As the General Counsel filed no exceptions, we do not pass on any other allegations in the complaint. There is no allegation in the complaint that the Respondent generally bargained in bad faith in the actual negotiations with the Union. Therefore, we do not adopt the board statement in the Intermediate Report that "* * * Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union. * * *"

[5] The clause is captioned "ARTICLE XXV—MOST FAVORED NATIONS CLAUSE," and provides: "Anything to the contrary notwithstanding, no other Employer in The Hollow Metal Door & Buck Industry shall be accorded terms and conditions in a collective bargaining agreement which are more favorable than those contained herein; including classifications and minimum rates of pay. The foregoing however, shall not apply to general wage increases and rates of pay."

[6] We do not adopt, as we find it unnecessary to pass upon, the Trial Examiner's statement that "The clause did not * * * make it impossible for the Union to conclude an agreement with Respondent. * * *"

tional Labor Relations Board hereby orders that the Respondent, Benne Katz, Alfred Finkel, and Murray Katz, d/b/a Williamburg Steel Products Company, Brooklyn, New York, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Unilaterally changing wages, rates of pay, or sick leave, or granting merit increases, or in any similar or related manner refusing to bargain collectively with Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, as the exclusive representative of its employees in the following unit:

> All technical engineering employees in the engineering department of the New York operation, including estimators, technical clerks, designers, draftsmen, listers, schedulers, hardware coordinators, methods and/or process engineers, and other technical engineering employees doing similar work regardless of assigned classification, but excluding all other employees, specifically office clerical employees, production employees, salesmen, mechanics, teamsters, guards and supervisors as defined in the Act.

(b) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with the Union as the exclusive representative of its employees in the above described unit.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of all its employees in the above described unit concerning rates of pay, wages, hours

of employment, and other conditions of employment, and embody any agreement reached in a signed contract.

(b) Post at its plant at Brooklyn, New York, copies of the notice attached hereto and marked "Appendix A."[1] Copies of said notice, to be furnished by the Regional Director for the Second Region of the Board, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director of the Second Region in writing within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., January 22, 1960.

PHILIP RAY RODGERS,

Member.

JOSEPH ALTON JENKINS,

Member.

JOHN H. FANNING,

Member.

(SEAL) NATIONAL LABOR RELATIONS BOARD.

[1] In the event that this Order is enforced by a decree of the United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

Appendix A attached to Decision and Order.

APPENDIX A.

NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT unilaterally change wages, rates of pay, or sick leave, or grant merit increases, or in any similar or related manner refuse to bargain collectively with ARCHITECTURAL AND ENGINEERING GUILD, LOCAL 66, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO as the exclusive representative of our employees in the following bargaining unit:

All technical engineering employees in the engineering department of our New York operation, including estimators, technical clerks, designers, draftsmen, listers, schedulers, hardware coordinators, methods and/or process engineers, and other technical engineering employees doing similar work regardless of assigned classification, but excluding all other employees, specifically office clerical employees, production employees, salesmen, mechanics, teamsters, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with the Union as the exclusive representative of our employees in the above described unit.

Intermediate Report.

WE WILL, upon request, bargain collectively with the Union as the exclusive representative of all our employees in the above described unit concerning rates of pay, wages, hours of employment, and other conditions of employment, and embody any agreement reached in a signed contract.

BENNE KATZ, ALFRED FINKEL, and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY.

(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Intermediate Report.

STATEMENT OF THE CASE

Upon a charge filed April 16, 1957, by the Union above-named, herein called the Union, against the above-named partnership, herein called Respondent, the General Counsel on September 8, 1958, issued a complaint alleging that Respondent had engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Respondent, by its Answer, denied the commission of any unfair labor practices and pleaded affirmative defenses which will be summarized and

considered in later portions of this Report. Pursuant to notice, a hearing was held before the undersigned duly designated Trial Examiner at New York, New York, between January 28, 1959, and February 6, 1959. The General Counsel and Respondent were represented by counsel, the charging Union by its representative, and were all afforded full opportunity to examine and cross examine witnesses, to introduce evidence bearing on the issues, and to file briefs. Respondent's motion to dismiss the proceedings for want of proof made at the close of the testimony, on which ruling was reserved, is now disposed of in accordance with the findings of fact and conclusions of law made below. Since the close of the hearing,[1] briefs have been received from the General Counsel and Respondent and have been duly considered.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. The Business of Respondent

Benne Katz, Alfred Finkel, and Murray Katz, are copartners d/b/a Williamsburg Steel Products Company at Brooklyn, New York, where they are engaged in the manufacture, sale and distribution of hollow metal doors, bucks, and related products. During the year preceding the filing of the complaint herein, Respondent, in the course and conduct of its business operations, caused to be manufactured, sold and distributed at said plant products valued at in excess of $200,000, of which products valued in excess of

[1] The General Counsel's unopposed motion to correct line 26 of page 560 of the official transcript of testimony is hereby granted.

$100,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New York. Respondent admits, and I find, that at all times material herein it has been engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The Labor Organization Involved

Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, herein called the Union, is a labor organization admitting to membership employees of the Respondent.

III. The Unfair Labor Practices

Following an election conducted by the Board pursuant to an agreement between the Union and Respondent, the Union was, on July 5, 1956, certified as collective bargaining representative of all technical engineering employees of Respondent's engineering department in its New York operation including estimators, technical clerks, designers, draftsmen, listers, schedulers, hardware coordinators, methods and/or process engineers, and other technical engineering employees doing similar work regardless of assigned classification, employed at its plant. Similar separate certifications were issued to the Union by the Board on the same day for similar units of employees at Superior Fire Proof Door and Sash Company, Triangle Steel Products Company, World Steel Products Corp., Pioneer Fire Proof Door Corp. and City Steel Door Corp. All of the employees aforementioned, including Respondent, were at all times material herein members of an associa-

tion of approximately 25 steel fabricators, manufacturing products similar to each other and known as Hollow Metal Door and Buck Association, Inc., hereinafter referred to as the Association.

On July 11, 1956, the Union, by identical letters to Respondent and each of the five other employers where the Union had been certified as bargaining representative, asked that arrangements be made as quickly as possible "for either individual or association wide bargaining" and advised that the Union would within 7 or 8 days transmit its proposals for a collective bargaining agreement. The letter noted, however, that in accordance with "previous discussions and mutual understanding, the wage rates and/or increases shall be negotiated on an individual Employer basis * * *." On July 19, the Union sent to Respondent and the five other employers a form letter listing a multitude of subjects for collective bargaining but repeating its position that wage rates and increases were to be negotiated on an individual basis.

Receiving no response to these letters, J. L. Raimist, business manager of the Union, "many times" called Sidney O. Raphael, attorney for both the Respondent and the Association, but was unable to arrange a meeting until August 30, 1956, when the first conference was held in Raphael's office. Though subsequent meetings were conducted in 1956 on October 2, October 18, October 24, November 1, December 5, and in 1957 on March 29, April 4, April 11, May 1, and May 13, the parties failed to reach total agreement and carried on no further negotiations.

Though both parties expressed willingness at the last meeting on May 13 to submit their differences to arbitra-

tion, they could not agree on the method of arbitration. The Union demanded that the arbitration be conducted under the auspices of the New York State Board of Mediation without cost to the parties, while Respondent insisted that they be conducted by an arbitrator appointed by the American Arbitration Association. Respondent objected to arbitration under auspicies of the State Board on the ground, as stated in its brief, that Respondent felt the State Board "could not render the required service in an objective manner since it had participated to [a] great extent * * * when it attempted to handle this matter by mediation."[2] The Union's objection to arbitration by the American Arbitration Association was that it was too costly, and could not be afforded by the Union. On May 16, Respondent posted a notice on its bulletin board advising the employees in the unit that negotiations had come to an impasse, that no immediate agreement was in sight, and that Respondent had offered to arbitrate the dispute under the auspices of the American Arbitration Association. Though the notice further stated that its purpose was to advise the employees "of the present status of the situation," it made no mention of the Union's offer to submit to arbitration by the State Board.

On May 17, the Union wrote Respondent asking for the immediate resumption of negotiations. Respondent replied on May 21 stating its willingness to negotiate, or to arbitrate under the American Arbitration Association. Though it was undisputed that Raimist thereafter had a large number of telephone conversations about

[2] A number of the meetings between the parties were conducted at the offices of the State Board and had been presided over by Howard Gamser, a Mediator in the employ of that Board.

continuing the negotiations with Raphael, attorney for Respondent who also represented it at every bargaining conference and at whose offices about half of the bargaining sessions were held, no further meetings were held.

On July 13, 1957, Halpern called employee Thibou to his office and told him that management had been working on a company contract "for quite sometime" containing a pension plan which the Union could not obtain for the men. Halpern told him he had worked out a schedule showing how much each man would receive under the plan based on age, length of service, and salary. At about the same time Halpern also invited employee Languelli into his office to look at the pension plan. During the conversation with Thibou, Halpern told him that the contract which the Union had negotiated with Pioneer was not so good as the one Respondent was ready to offer. On this and "various" other occasions, Halpern cautioned Thibou that he did not want these matters "to get around to the rest of the men until the situation was actually right for the information to be spread around." All this occurred at a time when Halpern, according to his own admission, "was well aware of considerable dissension and controversy among employees in the enginering department over union matters, * * *" that the employees were breaking up into two factions, and that he had heard a rumor being circulated that the Board's certification "of the Union was no longer effective." During the last week in July 1957, Halpern "knew that the dissension among the employees had reached a point where they were going to do something about it during that week, at the coffee break, which * * * runs normally for 10 to 15 minutes at 4 p. m."

At about the same time, the latter part of July, 40-50 employees in the bargaining unit held a meeting in Respondent's drafting room. The meeting was convened at 4 p. m. and lasted, according to the estimate of several witnesses, from 1 to 2 hours. Working hours at that time were from 8 a. m. to 4:30 p. m. but the men "normally" worked overtime to 5:30. Though Halpern was aware of the meeting, his office being nearby, and though he normally limited the coffee break to a relatively short period, he took no action to return the men to work before the meeting adjourned. Employee T. Sneed, Jr., testified that "believed" he was paid for the time he was in attendance at the meeting, while several others testified that they punched out *after* the meeting was concluded. Based on this testimony, and there being no denial thereof, it may reasonably be inferred that the men were in fact paid for this attendance at the meeting.

Herbert Jacobson, then a co-ordinator and staff assistant to Halpern,[3] assisted in notifying employees of the meeting which was called "basically • • • [to] do way with [the Union] as the bargaining agent" because the men felt they "could do a better job [themselves] than • • • the Union had done." Also in attendance was Supervisor Edward Wisniewski, chief draftsman. Jacobson read a proposed contract to be presented to Respondent and explained the procedure for decertifying the Union which, he explained, required the resignation of the employees from the Union. By a vote of 20 to 15 the men decided to present the proposed contract to Respondent and to proceed with the decertification of the Union. Having previous to

[3] At the time of the hearing, Jacobson was in charge of production control.

the vote agreed to abide by the vote of the majority, all employees in attendance at the meeting signed documents to decertify the Union, and to withdraw their membership therefrom. Shortly after this meeting, in August 1957, Respondent granted liberal wage increases to practically every employee in the unit, increases which exceeded those offered by Respondent to the Union in the previous May.

The complaint, as amended at the hearing, alleges that Respondent violated its statutory duty to bargain collectively with the Union "*in that*" it engaged in the following misconduct:

(a) Unilaterally changing sick leave.

(b) Unilaterally changing wage rates.

(c) Bargaining directly and individually with employees concerning wages and other terms and conditions of employment.[4]

(d) Aiding and assisting employees to repudiate the Union.

(e) Publicizing, sponsoring, permitting, attending and participating in meetings on its premises of employees in derogating of the Union's representative status.

(f) Unilaterally granting merit increases.

It is the foregoing specified conduct, and nothing more, which paragraphs 10 and 12 of the complaint plead as the conduct claimed to be violative of Section 8 (a) (5) and 8 (a) (1) of the Act. In that state of the rec-

[4] In response to a motion for a bill of particulars, the General Counsel stated that this allegation referred to the unilateral change of wage rates mentioned in (b) immediately above.

ord, I have concluded that it would serve no useful purpose to make more detailed findings as to all the areas of agreement or disagreement reached by the parties during their negotiations but to turn instead to immediate consideration of the testimony pertaining to the specific misconduct alleged in the complaint.

Merit increases for employees in the unit was one of the subjects which the Union specifically proposed as a subject of collective bargaining in its proposals submitted to Respondent on or about July 19, 1956. Raimist testified that at the first meeting on August 30, it was "definitely established that there would be a joint review of merits," but that the details would be worked out at later meetings. Alfred Finkel, the Respondent partner in charge of its labor relations and who participated in all the meetings, testified that the subject was merely mentioned at the meetings on August 30, October 2, and October 10, 1956, but that the parties agreed on each of those dates to postpone negotiating thereon until a later date. Notwithstanding the pendency of future negotiations, Respondent, in October 1956, unilaterally granted 34 merit increases; 20 similar merit increases were unilaterally granted in January 1957. The evidence is undisputed that these merit increases were all granted without notice to, or negotiation with, the Union. The evidence also establishes conclusively that Raimist vigorously protested this conduct at a number of the bargaining sessions as conduct tending "to destroy the bargaining unit and * * * the Union."[5]

[5] It is no defense that Respondent was allegedly merely following an established practice of quarterly reviewing the merit of its employees for "it is now beyond dispute that an employer is under a duty to bargain with the representative of its employees with respect to individual merit increases." *General Controls Co.*, 88 NLRB 1341, citing *N. L. R. B. v. J. H. Allison & Company*, 165 F. 2d 766 (C. A. 6), cert. denied 335 U. S. 814, rehearing denied 335 U. S. 905; see also *Armstrong Cork Company v. N. L. R. B.*, 211 F. 2d 843 (C. A. 5).

Intermediate Report.

On or about March 11, 1957, while negotiations with the Union were in progress, Respondent notified the employees in the bargaining unit, and its office personnel, that it was making a substantial change in its sick leave policy and that the change would be retroactive to January 1, 1957. Sick leave had been the subject of discussion between the parties at three conferences prior to March 11, 1957, but no agreement had been reached thereon. The change was imposed without notice to the Union and was the subject of a vigorous letter of protest by the Union on March 15. In reply thereto, Respondent stated its position frankly, albeit mistakenly, that it did "not feel obligated to explain the matter to [the Union] or anyone else until an agreement has been reached between" the parties.

In April 1957, Ernest Halpern, chief draftsman and supervisor of the employees in the bargaining unit,[6] announced to those employees "that henceforth an automatic wage increase system would be in operation for them as follows: Up to $74.99 per week—automatic increase of $5 per week every 3 months; from $75 to $90 per week—automatic increase of $5 per week every 6 months; over $90 per week—merit increases review every 6 months, raises to be granted in management's discretion on a merit basis." These increases were announced without notice to, or consultation with, the Union and were substantially better than what Respondent had previously offered the Union. They were thereafter, with slight modification, put into effect.

The foregoing findings that Respondent unilaterally granted merit increases, unilaterally changed its sick leave

[6] At the time of the hearing, Halpern was shop superintendent and plant manager.

policy and wage rates, all without notice to, or negotiations with, the Union, are based on undisputed evidence. Indeed the testimony establishing that conduct was given by Finkel, Halpern, one of Respondent's top supervisors, and by Respondent's own records.

At the hearing, and in its brief, Respondent defended its action aforementioned on the ground that the Union conducted the negotiations in such an "untoward • • • and intemperate" manner as to create an impasse thereby so "alient[ing] its own members [that it] ceased to be their bargaining representative." Based on the foregoing premise, Respondent further contends that "in the face of the Union's attitude and the impasse created thereby, the Respondents were authorized to give directly to their employees • • • the various wage and salary revisions • • • [which] followed an historical pattern." The only reason ascribed for the unilateral change of the sick leave policy was that Respondent deemed the change to be in the best interests of Respondent and its employees. I find this entire defense to be without merit.

In the argument in support of its defense, Respondent places greatest emphasis on (1) alleged shifting of positions by the Union from individual bargaining with Respondent to Association-wide bargaining, and (2) to the alleged insistence by the Union that Respondent had to accept a contract similar to the one that the Union had successfully negotiated with Aetna Steel Products Corporation, also a member of the Association, and containing a "favored nations clause" which Respondent contends "presented an impassable barrier to further negotiations with the Respondent and other employers."

As to (1), the record clearly establishes that the Union was willing throughout the entire negotiations, as a matter of convenience to all the employers and the Union, to bargain on an Association-wide basis on all terms and conditions of employment except wages, but demanded, as it had a right to demand, that the latter subject be negotiated separately with Respondent. It was Respondent who, though first agreeing to that division of subjects, shifted its position.

As to (2), dealing with the effect of the Aetna agreement on the negotiations between the parties, it should be noted at the outset that this contract was first considered in the negotiations on March 29, 1957, *long after the unilateral merit increases of October 1956, January 1957, and the unilateral change of sick leave on March 11.* Nor is there any merit to the argument that the "favored nations clause" in the Aetna agreement presented "an impassable barrier to further negotiations with Respondent." That clause read as follows:

> ARTICLE XXV—MOST FAVORED NATIONS CLAUSE
>
> Anything to the contrary notwithstanding, no other Employer in the Hollow Metal Door & Buck Industry shall be accorded terms and condition in a collective bargaining agreement which are more favorable than those contained herein; including classifications and minimum rates of pay. The foregoing however, shall not apply to general wage increases and rate of pay.

The clause did not, as Respondent contends, make it impossible for the Union to conclude an agreement with Respondent, or any other employer, on terms or conditions of employment other than, or more favorable to the em-

ployers than, those contained in the Aetna agreement. Its only effect might be, as Raimist explained at the conferences, to create a problem for the Union with the employees at Aetna whose working conditions might be worsened if other employers were given more favorable terms.[7] In any event, the record establishes that the parties continued to negotiate for approximately 6 weeks after the Union proposed the Aetna contract as a format or pattern on March 29.

Rather than demonstrating bad faith bargaining by the Union, the entire record compels the conclusion that it was Respondent's conduct which brought the negotiations to naught. Thus, Respondent's unilateral action heretofore found, "while negotiations were still continuing, and in complete disregard of the Union's status, provides the final insight into Respondent's conduct of the negotiations with the Union. It clearly shows that * * * Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union as required by the provisions of the Act."[8]

On the entire record I find and conclude that by taking the unilateral action above found before any claimed impasse was reached,[9] *and while negotiations were pending,*

[7] After the execution of the Aetna contract, the Union entered into individual contracts on less favorable terms to the Union and the employees at Pioneer Fireproof Door Corp., Triangle Steel Products Co., Inc., and City Steel Door Corp.

[8] *Fant Milling Company*, 117 NLRB 1277, 1282; enforcement denied on another ground by C. A. 5 in 258 F. 2d 851, which decision was, however, reversed by the Supreme Court on June 15, 1959 _____ U. S. _____

[9] Even assuming "the existence of an impasse, the legal rights inherent in this situation depend upon whether or not such impasse was reached as the result of *bona fide* collective bargaining. See *N. L. R. B. v. Andrew Jergens Company*, 175 F. 2d 130 (C. A. 9, 1949)." *Reed & Prince Mfg. Co.*, 96 NLRB 850.

Respondent did so in clear disregard of its obligation to bargain with the Union as the exclusive bargaining representative of its employees, and thereby undermined the authority which the Act bestowed upon the Union. By that conduct, Respondent violated Section 8 (a) (1) and (5) of the Act. *Medo Photo Supply Corporation v. N. L. R. B.*, 321 U. S. 678, 683-684; *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376; *N. L. R. B. v. Crompton-Highland Mills, Inc.*, 337 U. S. 217.

IV. The Effect of the Unfair Labor Practices

The activities of Respondent set forth in Section III above, occurring in connection with its operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has failed to perform its obligation to bargain in good faith with the Union, it will be recommended that upon request Respondent bargain in good faith with that organization. The withdrawal of membership from the Union by the employees in the latter part of July 1957, can have no effect on the portion of the

remedy just recommended. The Board has consistently held, with Supreme Court approval,[10] "that the only means by which a refusal to bargain can be remedied is an affirmative order requiring the employer to bargain with the Union which represented a majority at the time the unfair labor practices was committed." *Frank Bros. Company*, 44 NLRB 898, 917; *Poultry Enterprises, Inc.*, 102 NLRB 211, enforced in 207 F. 2d 522 (C. A. 5).

Here, the unfair labor practices of which Respondent has been found guilty were committed within the year following the Board's certification and at a time when the Union was the unchallenged exclusive bargaining representative of its employees. "Out of its wide experience, the Board many times has expressed the view that the unlawful refusal to bargain collectively with the employees' chosen representative disrupts the employees' morale, deters their organizational activities and discourages their membership in unions. The Board's study of this problem has lead it to conclude that, for these reasons, a requirement that union membership be kept intact * * * would result in permitting employers to profit their own refusal to bargain."[11]

The foregoing rationale also requires rejection of Respondent's affirmative defense that because of the lapse of time this proceeding has become moot or barred by laches. "Respondent cannot take advantage of the Board's delay in order to relieve itself of making amends for its unfair practices." *N. L. R. B. v. Andrew Jergens Company*, 175 F. 2d 130 (C. A. 9), certiorari denied, 338 U. S. 827.

[10] *Franks Bros. Company v. N. L. R. B.*, 321 U. S. 702.
[11] *Ibid.*

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All technical engineering employees of Respondent's engineering department in its New York operation including estimators, technical clerks, designers, draftsmen, listers, schedulers, hardware coordinators, methods and/or process engineers, and other technical engineering employees doing similar work regardless of assigned classifications employed at its plant, excluding all other employees, specifically office clerical employees, production employees, salesmen, mechanics, teamsters, guards and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. On and since July 5, 1956, the Union was, and presently is, the majority representative of the employees in the above described appropriate unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

4. By failing to perform its obligation to bargain in good faith with the Union in October 1956, and thereafter, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By unilaterally granting merit increases in October 1956, and in January 1957, by unilaterally changing its sick leave policy on or about March 11, 1957, and by unilaterally granting wage increases in April 1957, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged, and is engaging, in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that Benne Katz, Alfred Finkel, and Murray Katz, d/b/a Williamsburg Steel Products Company, their agents, successors, and assigns shall:

1. Cease and desist from:

(a) Making unilateral changes in wages, rates of pay, sick leave, or in any other similar or related manner refusing to bargain with the Union as the exclusive representative of the above designated appropriate unit;

(b) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with the Union as the exclusive representative of its employees in the above described unit.

2. Take the following affirmative action:

(a) Upon request, bargain collectively with the Union as the exclusive representative of all its employees in the

above described unit concerning rates of pay, wages, hours of employment, and other conditions of employment, and embody any agreement reached in a signed contract;

(b) Post at its plant at Brooklyn, New York, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being signed by Respondent's representatives, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Second Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report what steps Respondent has taken to comply herewith;

(d) Notify the Regional Director for the Second Region in writing within twenty (20) days from the receipt of this Intermediate Report what steps have been taken in compliance.

It is further recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report Respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the Board issue an order requiring it to do so.

Dated at Washington, D. C., this 13th day of July 1959.

DAVID LONDON,
Trial Examiner.

Appendix attached to Intermediate Report.

APPENDIX.

NOTICE TO ALL EMPLOYEES

PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain upon request in good faith with ARCHITECTURAL AND ENGINEERING GUILD, LOCAL 66, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO, as the exclusive representative of all employees in the bargaining unit described herein in respect to rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached embody such an understanding in a signed agreement. The bargaining unit is:

All technical engineering employees of our engineering department in our New York operation including estimators, technical clerks, designers, draftsmen, listers, schedulers, hardware coordinators, methods and/or process engineers, and other technical engineering employees doing similar work regardless of classifications, employed at our plant, excluding all other employees, specifically office clerical employees, production employees, salesmen, mechanics, teamsters, guards and supervisors as defined in the National Labor Relations Act, as amended.

Appendix attached to Intermediate Report.

WE WILL NOT by failing to bargain in good faith with ARCHITECTURAL AND ENGINEERING GUILD LOCAL 66, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO, by means of granting unilateral wage increases, merit increases, or unilaterally changing our sick leave policy, or in any like or similar manner interfere with, restrain, or coerce our employees in the exercise of their rights of self-organization, to form, join, or assist the above-named labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

BENNE KATZ, ALFRED KINKEL, and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY.

(Employer)

Dated ..... **By** .....
(Respondent) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

[1] **Stenographic Transcript of Testimony at Hearing of January 28, 1959.**

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY,
and
ARCHITECTURAL & ENGINEERING GUILD, LOCAL 66, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO.

Case No. 2-CA-5368.

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745 Fifth Avenue,
New York, New York.
Wednesday, January 28, 1959.

Met, pursuant to notice, at 10:00 a. m.

Before: David London, Trial Examiner.

Appearances:

Aaron Weissman, Esq., 745 Fifth Avenue, New York, N. Y., appearing on behalf of General Counsel.

Raphael, Searles, Levin & Vischi, Esqs., by: Sidney O. Raphael, Esq., and Charles W. Newmark, Esq., of Counsel, 18 East 41 Street, New York 17, N. Y., appearing on behalf of the employer, Respondent.

J. Lawrence Raimist, 160 West 44 Street, New York, N. Y., appearing on behalf of the union, Charging Party.

Stenographic Transcript of Testimony at Hearing of January 28, 1959.

[3] **PROCEEDINGS**

Trial Examiner: This is a formal hearing before the National Labor Relations Board in the matter of Benne Katz, Alfred Finkel and Murray Katz, doing business as Williamsburg Steel Products Company, and Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, known as Case No. 2-CA-5368.

The Trial Examiner conducting the hearing is David London.

Will the parties please enter their appearance on the record?

For the General Counsel?

Mr. Weissman: Aaron Weissman, attorney.

Trial Examiner: And for the respondent company?

Mr. Raphael: Sidney O. Raphael and Charles W. Newmark.

Trial Examiner: Mr. Raphael's address is 18 East 41st Street, New York, and Mr. Newmark is at the same address?

Mr. Raphael: Correct.

Trial Examiner: Are there any other appearances?

Mr. Raphael: The only other appearance is Mr. Finkel, who is, of course, one of the respondents. He is here. Mr. Alfred Finkel is sitting right behind me.

Trial Examiner: Is there any appearance by the charging union?

Mr. Weissman: Mr. Raimist is appearing for the charging [4] union.

Trial Examiner: Your full name is J. Lawrence Raimist?

Mr. Raimist: That's right.

Trial Examiner: 160 West 44th Street, New York City?
Mr. Raimist: Yes.

• • •

[6] (Thereupon the documents above referred to were marked General Counsel's Exhibits 1-A to 1-O respectively for identification and were received in evidence.)

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[9] J. LAWRENCE RAIMIST was called as a witness on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: What is your full name and address?

The Witness: J. Lawrence Raimist, 160 West 44th Street, New York City.

DIRECT EXAMINATION:

Q. (By Mr. Weissman) Mr. Raimist, are you the business manager of the Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO? A. I am.

Q. In addition to that, are you also a graduate and licensed professional engineer? A. I am a graduate civil engineer and a licensed professional engineer.

Q. This union is the charging party in this case; is that correct? [10] A. That's correct.

Q. On March 26, 1956, did your union file a petition for certain employees of the Williamsburg Steel Products Company, that petition being filed with the National Labor Relations Board? A. Yes.

Mr. Weissman: I ask that this be marked as General Counsel's Exhibit 2 for identification.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Mr. Raphael: I am going to object to it as immaterial and incompetent.

Trial Examiner: What is the purpose?

Mr. Weissman: The purpose for showing this petition to Mr. Raimist is to develop a complete factual background behind the actual certification and what occurred prior to the certification. I think it is important because certain events occurred prior to the certification which certainly fills out the entire story and gives us a complete picture of what occurred.

Mr. Raphael: I am going to object further on the grounds based on counsel's statement that they are not encompassed within the scope of the pleadings.

Trial Examiner: What is the date?

Mr. Weissman: The date of this is March 26, 1956.

[11] Mr. Trial Examiner, it should be pointed out that as the evidence develops in this case it will become apparent that more than one company is involved, and that it is therefore important to develop the background to show how this occurred and what occurred, and therefore I think that putting in the petition and other papers will lend a fuller understanding to this particular case. The facts are complicated.

Trial Examiner: Is the petition that led up to the certification described in 8-A?

Mr. Weissman: Yes.

Mr. Raphael: I further object on the ground these facts are not alleged in the complaint and I plead surprise. I am not going to come here to try a case based on a set of facts of which we had no knowledge or ability to prepare.

Trial Examiner: The objections are overruled. The exhibit may be received.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

Q. (By Mr. Weissman) Mr. Raimist, is this the petition that was filed by your union on that date? A. It was.

Q. Mr. Raimist, was a National Labor Relations Board hearing held as a consequence to the petition? A. Yes.

[12] Q. Do you recall whether that hearing was held on May 3, 1956?

Mr. Raphael: That is objected to as immaterial and incompetent and without the scope of the pleadings.

Trial Examiner: Overruled.

A. Yes.

Q. On June 20, 1956, did Local 66 and the respondent enter into a consent agreement? A. Yes.

Mr. Weissman: I ask that this be marked as General Counsel's Exhibit 3 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

Mr. Raphael: Same objection.

Trial Examiner: I take it you have no objection to its being marked.

Mr. Raphael: For identification? No. Nobody can object to that.

Mr. Weissman: Mr. Trial Examiner, I request that you consider the fact that this consent agreement stipulates the particular unit. As far as I know, the subsequent certification does not. This is important to establish what unit was involved in the subsequent certification.

Mr. Raphael: I am going to take serious objection to that. You are trying to defeat your first exhibit in this [13] case which you have offered by something which was apparently merged into the exhibit when it became a Board certification. I certainly take serious objection to this. We are going to have an obvious and irrefutable conflict in the exhibits right on the record as a result of this, I think.

Mr. Weissman: Mr. Raphael, you denied this was the unit appropriate for collective bargaining in your answer. This consent agreement, which bears your signature, incidentally, stipulates the unit that was involved in the election and the subsequent certification.

Mr. Raphael: With due deference to counsel, I don't think he paid much attention, Mr. Trial Examiner, to my statement, when you asked me the reason for my objecting or my denying number 7. I stated to you at the time that while originally the Board's certification had been couched in certain language, subsequent events—I did not say anything about preceding events—but subsequent events fol-

lowing that certification made it clear that the parties, by their acts and conduct, did something either to abandon the thing that they had or to change it. But now we are dealing with something which preceded that situation.

Trial Examiner: Now General Counsel claims this is one step which he is going to take to prove that the unit which he has set out in paragraph 7 is the appropriate unit.

Are you offering this exhibit in evidence?

[14] Mr. Weissman: Yes, I am.

Trial Examiner: You are objecting?

Mr. Raphael: As irrelevant and incompetent.

Trial Examiner: The objection is overruled and it may be received.

(The document heretofore marked General Counsel's Exhibit No. 3 for identification was received in evidence.)

Q. (By Mr. Weissman) Mr. Raimist, does this document bear your signature? A. Yes, it bears my signature.

Q. Is it the consent agreement which was entered into between Local 66 and the respondent? A. Yes.

Trial Examiner: May I see it, please?

Mr. Weissman: Yes (submitting).

Mr. Raphael: May I see that exhibit? I have never even looked at it.

Mr. Weissman: Yes (submitting).

Q. Mr. Raimist, subsequent to this consent agreement being signed, an election was held at Williamsburg; is that correct? A. That's correct.

Q. After that date, specifically July 5, 1956, was a

certification issued to Local 66, stating that Local 66 was the representative of the employees for the purposes of collective bargaining in the unit herein involved? [15] A. Yes.

Mr. Raphael: I object to it as immaterial. It is covered by Exhibit 1.

Trial Examiner: I think it is admitted in paragraph 8-A of the answer, isn't it?

Mr. Weissman: Mr. Examiner, again, while it is true that this has been admitted, I would like to put it in for this reason. Subsequent testimony is going to go into the problem of the bargaining with respect to this company and other companies.

Trial Examiner: You say you would like to put this in. What are you talking about?

Mr. Weissman: The certification. I think that in this case, because of the complicated nature of the events, that it is wise to give a full and factual picture of what happened.

Trial Examiner: I don't see what can be added by what you have in your complaint and what is admitted in the answer.

Mr. Weissman: In that case, I will withdraw the offer and the question with respect to the certification.

Q. (By Mr. Weissman) Mr. Raimist, was Mr. Raphael acting as attorney for the respondent at that time? A. Yes.

Q. Do you know whether Williamsburg, the respondent in this case, is a member of an association? A. Yes.

[16] Q. Do you know the name of the association? A. The Hollow Metal Door and Buck Association.

J. L. Raimist, for General Counsel, Direct.

Q. At the time that the petition for the Williamsburg case was pending before the NLRB, did Local 66 have petitions pending for other companies of this association?

Mr. Raphael: That is objected to as incompetent and immaterial.

Mr. Weissman: Mr. Trial Examiner, again the bargaining in this case is intertwined with these other companies. In additon, Mr. Raphael knows of certain conversations that took place which make it imperative that this information be presented in this hearing.

Mr. Raphael: Mr. Examiner, may I respectfully point out at this hearing that cases before this Board to my knowledge are tried, as they are in the District Court, on pleadings. We have a pleading here which is the charge followed by the complaint which we have answered. If it was the intention of the Board to weave a web of a lot of evidence predicated upon a set of facts which are not contained in this complaint, it certainly ill behooves them to come here and ask us to meet those issues at this time without foreknowledge that those are the facts.

Trial Examiner: There is an intimation in General Counsel's statement that some of the bargaining with which we are evidently concerned by the pleadings that took place as part of [17] some negotiations with the association. Is that it?

Mr. Weissman: The bargaining in this particular case, most of the bargaining took place with a number of companies of this association, including the respondent in this case.

Mr. Raphael: All I can say again—of course, I

won't repeat this too often, but I want it understood I have a general standing objection to any line of inquiry which is in pursuance of this, because if it is not in the pleadings, I have been trained as a lawyer, it is not in the case. This is a very, very radical departure from that rule and we have here a set of circumstances which I didn't anticipate to meet this morning.

Trial Examiner: But the General Counsel tells me that the proof will be some of these negotiations were carried on as part of negotiations with other parties who are members of this association. In order for me to get the complete picture with respect to this respondent, in view of General Counsel's statement, it seems to me I have to take this other testimony.

The objection is overruled. You may proceed.

Mr. Weissman: Will you answer the question?

The Witness: May I have the question? I got lost in all the argument.

(Question read.)

The Witness: Yes.

Q. (By Mr. Weissman) Would you give us the names of the [18] companies that were involved? A. There was the Triangle Steel Products; City Steel Door; Pioneer Fireproof Door; World Steel Products Corporation.

Q. Was there a case pending with Superior Fireproof? A. Superior Fireproof Door and Sash Company. I don't know how I could forget them.

Q. Was there also a case pending with respect to Atlantic Metal? A. Atlantic Metal Products.

Q. So that there were petitions pending for six other companies at the same time? A. That's right.

Q. Do you know whether these six companies are members of any association? A. Yes.

Q. Do you know the name of the association? A. The same association as the Williamsburg Company, Hollow Metal Door and Buck Association.

Q. Mr. Raimist, in your dealings with these companies before the National Labor Relations Board, can you tell us who represented them as attorney? A. Mr. Sidney O. Raphael.

Q. The same attorney that represented the respondent in this case before the Board? A. That's right.

[19] Q. Do you recall whether there were any conversations pertaining to these petitions with Mr. Raphael and other employers of this association? A. Yes.

Q. Can you tell us the approximate dates of these conferences? A. There were conversations and then there were conferences made in June of 1956.

* * *

[20] Q. Mr. Raimist, did you receive certifications from the National Labor Relations Board with respect to any of the six companies which you mentioned previously? A. Yes.

Q. How many of the six? A. Five of the six.

Q. Which one was the exception? A. The exception was Atlantic.

Q. If you know, were all of the certifications issued on the same date? A. They were all issued July 5, 1956.

Mr. Weissman: I ask that the reporter mark these as General Counsel's Exhibits 4, 5, 6, 7 and 8 for identification.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 4, 5, 6, 7 and 8 respectively for identification.)

Q. I ask you whether these certifications are the certifications which you received for the five companies in question? A. Yes.

Mr. Weissman: I offer them in evidence as General Counsel's Exhibits 4, 5, 6, 7 and 8.

Trial Examiner: Any objection?

Mr. Raphael: The same objection as heretofore urged.

[21] Trial Examiner: The objection is overruled and they may be received.

(The documents heretofore marked General Counsel's Exhibits Nos. 4, 5, 6, 7 and 8 for identification were received in evidence.)

Q. (By Mr. Weissman) Mr. Raimist, had Local 66 ever been certified for any other companies who are members of this association? A. Yes.

Q. Would you give us the names of these companies? A. Aetna Steel Products Corporation and the American Steel Buck Corporation. The old name has been changed to American Steel Products Corporation in the past year or so.

Q. At the time that you had the petitions pending with respect to the respondent and the six other companies, were you actively engaged in negotiations with these two companies? A. I was.

• • •

[23] Q. Mr. Raimist, did you or your office, under your supervision, mail a letter dated July 11, 1956 to the respondent requesting bargaining? A. Yes.

Mr. Weissman: Mr. Raphael, I believe this is one of the letters that we had subpoenaed.

Mr. Raphael: Do you have a copy? Don't you have the letter we mailed to you?

Mr. Weissman: I would like the original, if you have it.

Mr. Raphael: I will consent your copy is all right, if you have it here. I won't fight you on matters of form, Mr. Weissman.

Mr. Weissman: I don't have the copy.

Mr. Raphael: Are you minus the letter?

Mr. Weissman: I can't use it. It is part of an exhibit. I would like the original, if you have it.

Mr. Raphael: I would rather not give up the original.

Trial Examiner: Do you say it was subpoenaed?

Mr. Weissman: It was subpoenaed.

Trial Examiner: Is it here?

Mr. Raphael: It is here.

Trial Examiner: May I see it?

Mr. Raphael: The original?

Trial Examiner: Yes.

Mr. Raphael: It is part of a file with us, too. I have [24] no objection to it going in, but it is the only one we have.

Mr. Weissman: Mr. Trial Examiner, we have a photostat machine. Some time today I would be very happy to substitute photostatic copies for that original.

Trial Examiner: The subpoena calls for the production of this instrument and it is here. I assume he is entitled to have it. As he says, it will be

photostated here in your presence, if you wish, and the original will be returned to you.

Mr. Raphael: There are some circlings on this.

Trial Examiner: I noticed that. I assume that he is asking only for the request to bargain that was made on July 6th. If those circles were not on there when it was received in the mail, you may get together and perhaps stipulate that they may be erased beforehand or that they are not part of the exhibit.

Mr. Raphael: I am perfectly willing to give this letter, with the understanding that we will get the return of this letter. I am perfectly willing to have a photostat of this letter be marked in evidence and be deemed the exhibit, and that whatever notations, interlineations, delineations that appear on this copy, they are not to be considered part of the exhibit. They merely are notations, that's about all.

Trial Examiner: Made by the company or by you?

Mr. Raphael: Made by the company's representatives.

[25] Mr. Weissman: I will be glad to stipulate to that. If we have your permission to substitute the photostatic copies, I will be glad to provide them.

Trial Examiner: That may be done.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Q. (By Mr. Weissman) Mr. Raimist, I show you this letter which is dated July 11th and ask you whether this is

the letter that was mailed from your office requesting bargaining? A. Yes.

Mr. Weissman: I offer it in evidence as General Counsel's Exhibit 9. It is a letter to the respondent dated July 11th, signed by A. Leo Carrick, secretary of Local 66.

Trial Examiner: Is there any objection?

Mr. Raphael: None.

Trial Examiner: It may be received.

(The document heretofore marked General Counsel's Exhibit No. 9 for identification was received in evidence.)

Q. Mr. Raimist, was a second letter requesting the respondent to set up bargaining conferences sent to the respondent on July 19, 1956, listing proposed provisions for bargaining? A. Yes.

Mr. Weissman: Mr. Raphael, do you have that?

Mr. Raphael: I can't give you that letter.

[26] What I am going to have to do, Mr. Trial Examiner—and Mr. Weissman has the letter inasmuch as we do—this is written up with our notes and I will have to type up a copy. I can't give him this.

Mr. Weissman: Mr. Raphael, I am going to see whether I can find a copy of that.

Mr. Raphael: I will be glad to get it typed and give it to you.

Mr. Weissman: If we have a few minutes' recess, I think I can get a copy.

Trial Examiner: We will take a five-minute recess.

(Recess taken.)

Trial Examiner: On the record.

Mr. Weissman: I ask that the reporter mark this as General Counsel's Exhibit 10 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 10 for identification.)

Q. (By Mr. Weissman) Mr. Raimist, I show you this letter which is dated July 19, 1956 and ask you whether this is the letter that was sent to the respondent, again requesting bargaining and listing certain provisions as a basis for bargaining? A. Yes. This is a copy of the letter.

Mr. Weissman: I offer this in evidence as General Counsel's [27] Exhibit 10.

Mr. Raphael: No objection.

Trial Examiner: It may be received.

(The document heretofore marked General Counsel's Exhibit No. 10 for identification was received in evidence.)

Q. (By Mr. Weissman) Mr. Raimist, subsequent to these two letters being sent to the respondent, did you hear from the respondent with respect to a conference for bargaining? A. No.

Q. Do you recall whether you had any discussions with Mr. Raphael concerning a date for bargaining? A. I called Mr. Raphael many times and he told me that as soon as he could get the employers together, which included the other firms, and including Aetna and American Steel Buck into their meeting, he would call a conference, and he was doing his best to get the parties together.

Mr. Raphael: May we have a date for that discussion, please?

The Witness: That was varied dates, telephone calls to Mr. Raphael's office, between the period of the letter—

Trial Examiner: Which letter?

The Witness: Between the time that the letter was sent, this July 19th letter, and the time the first conference actually took place.

Q. (By Mr. Weissman) Mr. Raimist, did a conference take place [28] on August 30, 1956? A. Yes.

Q. Can you tell us the employers' representatives that were present at this conference? A. The employers' representatives were Mr. Mittleman of World Steel and Mr. Finkel of Williamsburg Steel Products.

Q. Mr. Raimist, did you say Mr. Raphael was present at this conference? A. And Mr. Raphael. The conference was held in Mr. Raphael's office.

Q. Can you tell us who was present for Local 66? A. Myself and a committee of employees representing various shops.

Q. Mr. Raimist, do you recall whether anything was said about other employers that were supposed to have been present? A. This meeting was called and a group of employers were there. When we came in, both Mr. Mittleman and Mr. Finkel said they are sorry, but the other employers did not show up at the conference, that they were supposed to be there, and that it wasn't proper for them to go ahead with the conference, inasmuch as the other members of the committee of employers did not show up. However, I tried to explain that it wasn't a bright thing to do, especially after waiting for about six weeks, during which time it was difficult to get this conference. So that an agreement was reached we would [29] call this an informal conference and we went over many of the items of the contract.

Q. Mr. Raimist, in discussing items at this informal conference, were the provisions as listed in General Counsel's 10, which is the July 19th letter, used as a basis for discussion? A. Yes.

Q. I ask you specifically whether at this conference there was any discussion of merit increase provisions, which is item G of General Counsel's Exhibit 10?

Mr. Raphael: I am going to object to the question unless the witness testifies, either from memory or record, as to what items were taken up at the meeting. Otherwise the question is leading and suggestive.

Trial Examiner: The objection is overruled. He may answer.

Answer that yes or no.

The Witness: The answer is yes.

Q. (By Mr. Weissman) Can you tell us what was discussed at this conference with respect to merit increase provisions? A. Items E, F and G of the letter of the 19th, that is, July 19th, were discussed together. The items referred to job classifications and minimum rates of pay.

Mr. Raphael: Mr. Trial Examiner, if the witness is referring to some papers which he is using to refresh his [30] recollection, may I ask that they be marked for identification at this time?

Mr. Weissman: May I ask the witness what those papers are that he has in his hands?

Trial Examiner: Yes.

The Witness: These are the conference notes which I took at each of the conferences.

Mr. Weissman: Mr. Examiner, may we go off the record for just a minute?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Weissman) Mr. Raimist, can I have your notes of the August 30th meeting? A. Yes.

Mr. Weissman: I would like to ask that this be marked as General Counsel's Exhibit 11.

The Witness: That's the only record I have.

Mr. Weissman: I would like this marked as General Counsel's Exhibit 11 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 11 for identification.)

Q. Mr. Raimist, I show you General Counsel's Exhibit 11 for identification and ask you what this represents to you. A. These are notes which I took at the August 30, 1956 [31] conference.

Mr. Weissman: I gather, Mr. Raphael, there is no objection for the witness to refresh his memory from his notes?

Mr. Raphael: If the witness will testify that his memory is exhausted and these papers are the sole means for his testifying, I certainly have no objection. That is in conformity with the rules of evidence, Mr. Weissman.

Q. (By Mr. Weissman) Mr. Raimist, going back to my question with respect to merit increase provisions, can you answer what was the discussion concerning this provision at the August 30th meeting? A. On the question of merits, the same as at all future conferences. Merits

were always discussed in conjunction with the classifications, the minimum rates of pay, the question of apprenticeship training came in, and it was agreed that a clause or a formula to establish a proper procedure for merit increases would be established and it could probably be established after we had established the type of classifications we had, the rates of pay if an apprenticeship training program was included, and we would know how to establish it. But it was definitely established that there would be a joint review on merits.

Mr. Raphael: I am going to move to strike out that portion of the witness' answer where he said in effect or in substance "same as all other subsequent meetings."

[32] Trial Examiner: That part may be stricken.

Q. (By Mr. Weissman) Mr. Raimist, was there any discussion at this meeting with respect to sick leave, which is item M of the July 19th letter? A. Yes.

Q. Can you tell us what was discussed with respect to sick leave? A. The union's proposal was one day per month with a maximum accumulation of 30 working days sick leave. Mr. Finkel proposed one day per year sick leave with a maximum accumulation of 20 days after 20 years.

Q. Do you recall whether there was any discussion of a general wage increase at this conference? A. What is the item?

Q. Item Y of the July 19th letter. A. Will you give me also, since I am not referring to the notes, what item is on no-strike, no-lockout? I remember that was the last item we discussed that day.

Q. That's X. A. Therefore, there was no discussion on that particular thing.

Q. Would that also be true with respect to part one of the general notes which states "Employee not to lose benefits or suffer reduction because of contract"? A. No. That was not taken up at that meeting.

[33] Q. Mr. Raimist, the next meeting that was held with the employers, as I understand, was on October 2, 1956; is that correct? A. That's correct.

Q. Can you tell us which employers were represented at this meeting? A. I know Mr. Mittleman of World Steel was there; Mr. Finkel of Williamsburg; Mr. Graine from Pioneer; I think Mr. Kahr was there, of Aetna Steel. There is a Mr. Seer and a Mr. Sheer. I generally get those two mixed up.

Q. Can you tell from your notes? A. I don't pretend to have that good a memory as to who was present at that time.

Q. You have no recollection of this? Can you refresh your recollection from your notes?

Trial Examiner: Before he does that, I would like to have this marked for identification as General Counsel's Exhibit 12.

Mr. Raphael: Will you describe that paper?

Mr. Weissman: For the record, it is a sheet of writing paper, lined paper.

Mr. Raphael: What does it purport to represent?

[34] Mr. Weissman: It has notes on them.

Trial Examiner: Which meeting?

Mr. Weissman: October 2, 1956 meeting.

(Thereupon the document above referred to was

marked General Counsel's Exhibit No. 12 for identification.)

Q. (By Mr. Weissman) I show you General Counsel's Exhibit 12 for identification and ask you whether these notes were made at the October 2nd meeting by yourself? A. That's right.

Q. I will ask you to refresh your recollection with respect to the employers that were represented at this meeting. A. Mr. Finkel, Mr. Graine, Mr. Sheer, Mr. Mittleman, and Mr. Raphael.

Q. Would you also give us the names of the firms that they represented? A. Mr. Finkel represents Williamsburg; Mr. Graine, Pioneer; Mr. Sheer, City Steel Door; Mr. Mittleman, World Steel.

Q. Mr. Raimist, at this October 2, 1956 meeting was there any discussion of Item G, merit increase provisions, if you recall? A. I don't recall. My notes would refresh my memory whether there was or not.

Q. Would you refer to your notes and refresh your recollection from your notes? A. Yes. There was a discussion of classifications, the job [35] descriptions, classification definitions, the minimum rates, apprenticeship training program, and merit increases, in a group.

Q. Do you recall anything else being said with respect to merit increases at that time? A. The reason the union has always requested and it has always been worked out—

Mr. Raphael: I will move to strike out the answer as irresponsive.

Mr. Weissman: I will accept that.

Trial Examiner: Strike it.

Q. (By Mr. Weissman) Mr. Raimist, please confine yourself to the discussion that took place at that meeting.

Was there anything else said with respect to merit increases at that meeting? A. Well, it was agreed that the formula for merit increases would be worked out whereby both parties would participate in the merit increases; but such a formula as to how it should operate could not be worked out until after the classifications, the classification definitions, the minimum rates, and until the apprenticeship training program, which everybody was enthusiastic about, was worked out.

Q. Was there any discussion as to who was to draw up these provisions? A. It was suggested that Mr. Raphael would draw up a format [36] for it and we would discuss it.

Q. Was there any discussion at this meeting about sick leave, which was item M of the July 19th letter, if you recall? A. Will you tell me on the July 19th sick leave, was that before vacations and after?

Q. I will show you General Counsel's Exhibit 10 and ask you to answer the question. A. From memory, I don't think we went beyond vacation, which would mean that we did not discuss it.

Q. You mean you do not actually recall at this time? A. I don't recall.

Q. Would you refresh your memory from your notes, please? A. No, we did not.

* * *

[37] Q. (By Mr. Weissman) Mr. Raimist, at this meeting was there any discussing about individual meetings for wages, if you recall? A. I don't recall.

Q. Would your notes refresh your recollection? A. Yes, I believe they would.

Q. Would you please refer to your notes?

Mr. Raphael: By notes, Mr. Weissman, you are referring to Exhibit 12 for identification?

Mr. Weissman: That is correct.

The Witness: No.

Q. (By Mr. Weissman) Do you know whether there was any discussion of general note item 1, "Employee not to lose benefits or suffer reduction in salary because of contract," which is part of the July 19th letter? A. You mean at this October 2nd meeting?

Q. That is correct. A. No. We did not reach that point at this meeting.

Q. The next meeting in this series of meetings, Mr. Raimist, was October 10, 1956; is that correct? A. That is correct.

Q. Can you tell us the names of the employer representatives at this meeting?

Mr. Raphael: You say October 10th?

Mr. Weissman: That is correct.

[38] The Witness: I know Mr. Mittleman of World Steel and Mr. Finkel were there, and Mr. Raphael, the meeting being held again at Mr. Raphael's office.

Q. Who was present for the union? A. The union committee and myself; in fact, Mr. Mittleman came late to the conference and Mr. Finkel and Mr. Raphael carried on alone until he got there. The committee members of the employers' group did not show up.

Q. At the October 10th meeting, do you recall whether there was any discussion of the merit increase provision, which is item G of your July 19th letter? A. I know it was not discussed at the beginning of the conference.

Whether it was discussed at the end of the conference, I don't remember. I would have to refresh my memory. I don't think so.

Q. Do you have your notes with you on that meeting? A. Yes.

Mr. Weissman: I ask that this be marked for identification as General Counsel's Exhibit 13.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 13 for identification.)

Mr. Weissman: This purports to be the notes of the October 10th meeting.

Trial Examiner: If you have any more meetings and you think you are going to use them, we might as well have them [39] marked at one time.

Mr. Weissman: I would prefer to go at it one at a time.

Trial Examiner: All right.

Q. (By Mr. Weissman) I show you General Counsel's 13 for identification and ask you whether you recognize this document? A. Yes. These are notes I took at the meeting of October 10, 1956.

Q. Would you refresh your recollection with respect to the merit increase provisions? A. I was right in my original thought, that we did not discuss it.

Q. Was there any discussion of sick leave at this meeting, which is item M? A. Yes.

Q. Will you tell us the nature of the discussion? A. The same that was stated at the August 30th conference was suggested or proposed to us again, namely, one day per year with a maximum accumulation of twenty days

after twenty years of service, that is, providing a person wasn't sick during that time. If he were, those days would be deducted.

Q. Do you recall whether there was any discussion of the general notes, particularly provision 1, which states again, "Employee not to lose benefits or suffer reduction in salary because of contract?" [40] A. Definitely.

Q. Tell us the discussion. A. Basically, it was all agreed to. The only item that was objected to was that a correction be made in one number 3 because of the 35 hours a week which was contained in that. The only exception taken was to the 35-hour week. Otherwise there were no objections.

Q. Specifically referring to item 1 of the general notes, are you testifying that the employers agreed to item 1 of the general notes? A. They said that was okay.

Q. Was there any discussion about a general wage increase at this meeting? A. Yes, because that came under item C. When the question came up, I stated again that the general wage increase has nothing to do with the minimum rates of pay of the classifications, that because of the disparity, the wages between the various companies would have to be negotiated individually with the companies as per our previous agreements.

• • •

[41] Q. (By Mr. Weissman) The next conference took place on October 18, 1956; is that correct? A. Yes.

Q. Can you tell us the names of the companies that were represented and their representatives at this meeting?

Trial Examiner: I think we are wasting a lot of time by going through these preliminary questions

first whether he can recall the names. Apparently he doesn't recall all the information and apparently there were a lot of meetings. I see no objection to him immediately going to his notes. Counsel can indicate when he is referring to his notes and respondent's counsel may look at the notes that are used by the witness.

Go ahead accordingly.

[42] The Witness: May I ask a question here? Are they copying my notes? That is what I want to know. Mr. Newmark is copying my notes.

Trial Examiner: They have a right to see any notes that you use to refresh your recollection.

The Witness: Are they allowed to copy them?

Trial Examiner: I see no reason why they can't. If they can see them, I assume they can copy them.

Mr. Newmark: This is No. 14?

Trial Examiner: Nothing has been offered yet.

Q. (By Mr. Weissmann) Referring to your notes of the October 18th meeting, would you tell us the names of the employers that were present and their representatives? A. World Steel, Mr. Mittleman; Williamsburg, Mr. Finkel; Aetna Steel, Mr. Kahr; Pioneer, Mr. Graine; Triangle, Mr. Seer; and Mr. Raphael. It was all at Mr. Raphael's office. Those are the ones that I recall.

Q. Before we go any further, let us mark this for identification. A. All right.

Mr. Weissman: Will the reporter please mark this for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 14 for identification.)

[43] Q. (By Mr. Weissman) Mr. Raimist, referring to your notes, can you tell me whether there was any discussion of the merit increase provisions at the October 18th meeting? A. Yes, there were.

Q. Would you tell us the discussions with respect to the merit increase provisions, item G? A. This was a bit of a complicated conference. When we first met, Mr. Graine said that he was speaking for the Association committee and he gave us certain items, and then we had a discussion on the items which the union drew up, and in the discussion of the items that the union brought up we again discussed the question of merits, and that again was in conjunction with classifications, the classification definitions, the minimum rates for classifications, and the apprenticeship program and the merit formula to be established, to be worked out jointly as to how the merits should work, how the formula should be used or the format should be used for merits, which can only be done after those other items had been disposed of.

Q. Was there any discussion with respect to the way merit increases were to be handled? A. Jointly between the parties, but the format for it, the formula for it, to be developed after we had the other items.

Q. At previous meetings you testified that Mr. Raphael was to draw up a provision.

[44] Mr. Raphael: I am going to object to this prefatory questioning that lead and suggest to this witness. It is obvious the way the question is couched what the answer is to be. I ask the Trial Examiner to instruct counsel to please frame his questions properly with respect to each item.

Trial Examiner: Did you ever get any proposal from Mr. Raphael?

The Witness: As yet, we had not received it.

Trial Examiner: When you say as yet, you are speaking of what date?

The Witness: October 18th. There was much discussion, but no proposal.

Q. (By Mr. Weissman) With respect to item M, sick leave, was there any discussion at the October 18th meeting with respect to that item? Please refer to your notes.

Mr. Raphael: By "that item," you mean what?

Mr. Weissman: Sick leave, item M.

The Witness: That was discussed when the union reviewed its proposals again, and the union again stated that it was looking for one day per month accumulation.

Q. (By Mr. Weissman) Do you recall whether the company made any offer with respect to sick leave at this conference? A. I have no record of the company offering anything beyond what had been offered by them previously.

[45] Q. When you say "beyond," was there any discussion on their part with respect to an offer at this meeting? A. Only in the general discussion. We were told to the effect, "You have our proposition." In other words, "We have given it to you." There was no definite proposal and no definite statement. It was simply in the form of what had been previously suggested to us or given to us or proposed to us.

Q. Mr. Raimist, with respect to the general notes in item I, that the "Employee was not to lose benefits or suffer reduction in salary because of the contract," was there any discussion of this item? A. Yes.

Q. Tell us about it. A. It was part of the discussion. It was brought up by the union and there was pretty much the same reaction as we had at the previous conference.

Q. Tell us what was said. A. That basically they had no objection to it, but the item of the 35-hour week in that note 3 was, of course, not objectionable—that is, was not acceptable.

Q. Did they state what was acceptable to them with respect to item 3? A. There had been a discussion. The proposal had been a 40-hour week.

[46] Q. That was the only qualification they made? A. Up to that time.

Q. Was there any offer made at this conference with respect to classifications, minimums and wage increases by the employers? A. Yes.

Q. Would you please tell us what this offer was? A. That was at the opening of the conference when Mr. Graine said he spoke for the Association committee. He said that these were prepared by the companies, that the classification should be apprentice, junior, intermediate, senior second class, senior first class. Then he said that rather than have the wages changed—and I wrote this down very carefully; this is a verbatim thing—

Mr. Raphael: I ask that the characterizations and enconiums of the witness' own testimony be stricken from the record.

Trial Examiner: You may proceed. If he can recall verbatim what was said, it is proper for him to say so.

Mr. Raphael: I am talking about the statement he made, Mr. Examiner, that he wrote it down very carefully. That would seem to lend some color to it, that that testimony is gospel.

Trial Examiner: It just shows his characterization of what he did.

[47] Proceed.

The Witness: May I clarify it further by saying that on some of these items, when I say "carefully," as the employers' representatives will recall, at different conferences when certain special statements were made by them, I said, "Just let me have this," and I wrote it down and I even had it checked to make sure that on these particular items I was not wrong in what they said so that I could report it properly to my members.

Trial Examiner: Proceed.

The Witness: Mr. Graine said that rather than have the wages bargained for individually by companies, instead, they were offering the following on a three-year contract basis: that we have apprentices, and they have a range from fifty dollars minimum to a sixty dollars maximum; juniors from a sixty-dollar minimum to a seventy-five-dollar maximum; intermediates from a seventy-five-dollar minimum to a ninety-dollar maximum; a senior second class from ninety dollars to one hundred dollars maximum; and senior first class from one hundred dollars minimum to one hundred twenty dollars maximum; and they offered to give the men within the classifications as just stated three dollars every six months, with the understanding that when a man reaches the top of any classification it is management's prerogative to advance him beyond that point.

[48] Q. (By Mr. Weissman) Can you tell us what was your response to that offer? A. The union's response na-

turally was, number one, general wage increases have nothing to do with this, since that is to be bargained as per previous arrangement on an individual-company basis; number two, that we oppose the maximum rates of any classifications, since technical engineering or other type of professional employees should have no maximum, but there should be a value based on merit of what they are worth and what they produce beyond the minimum rates; and three, that these minimums, and also what they had written or proposed, were inadequate, because they proposed to classify the men—excuse me—that the proper way to classify the men is by their classifications or the job that they perform and not classify them into groups by fitting their existing rates of pay into that rate structure that the company wants to pay. That is nothing new. It is tried by various companies or industries to try to keep rates down. That is the formula.

Mr. Raphael: I move to strike that out.

Trial Examiner: The later part of the answer may be stricken.

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[49] J. LAWRENCE RAIMIST resumed as a witness on behalf of the General Counsel and, having been previously duly sworn, was examined and testified further as follows:

Further Direct Examination:

Q. (By Mr. Weissman) Mr. Raimist, do you recall attending a meeting on November 1, 1956? A. I do.

Q. Can you tell us from your notes the names of the companies and their representatives that were present at

the meeting? A. I don't need the notes for that. There were only three company representatives present besides the attorney. They were Mr. Graine of Pioneer, Mr. Finkel of Williamsburg, and Mr. Mittleman of World Steel, and Mr. Raphael. This was also at Mr. Raphael's office.

Q. You were present at this meeting with the committee? A. The union committee representing the various firms.

Q. Can you tell us what occurred at this meeting with respect to wages? A. At this meeting—I am trying to think—there was a wage offer, but we came to this meeting and we were supposed to receive a package proposal based on the promises made at the [50] previous meeting, which was on or about the 24th of October. When we got there, it was a seven o'clock meeting, and we waited until 7:30, when they got together, and then they adjourned in order to prepare their package. It was about 9 o'clock that they came out and they presented the following package. They said that they were ready to submit a cents per hour increase covering wages, holidays and sick leave. I stopped them. I told them that the general wage negotiations or general wage increases were to be negotiated on an individual company basis as per previous agreements reached, in fact as a result of which agreements the stipulations for consent election were signed. We turned it down. We told them we didn't even want to hear how many cents per hour because that was out of order. They then recessed again. They came back into conference after about a half hour or so recess and Mr. Mittleman spoke for the group at this time. He stated that they now feel that inasmuch as we are not getting anywheres, that we should recess the association negotiations, and instead we should

start bargaining on an individual company basis for wages, and after the individual wage negotiations with each company were completed, that then we should resume the association negotiations.

I was the spokesman for the union committee and I naturally turned it down.

Q. Mr. Raimist, can you tell me whether the employers had [51] ever taken a position with respect to general wage increases previously? A. During the different conferences we had asked, as per our original request of the July letters, that we also start discussing general wage increases on an individual company basis, and we were repeatedly told, "Look, how can we possibly negotiate a general wage increase with you when we don't know what the cost of the various fringe benefits are going to be, including the welfare and pensions? If we have the other things straightened out, then the companies could talk to you on general wage increases." And now at November 11th, this was a complete about-face. It was a complete waste of time and I told it to the company.

Q. You mean November 1st? A. November 1st. If I didn't say that d , I'm sorry. It is November 1st. I said that that was just stalling.

Mr. Newmark: So the record can be clear, is what the witness testifying to all related to the November 1st meeting?

Mr. Weissman: That's correct.

The Witness: There are previous references that I made as to what had happened when I was asked a question whether we had any discussions regarding the general wage increases. I stated we were told at different conferences that how could it be feasible

or possible to properly negotiate a general wage increase until they knew what the cost of the fringe [52] benefits or the welfare or pension under the master agreement would be.

Q. (By Mr. Weissman) These discussions that you are now referring to were held at prior negotiation meetings? A. At prior conferences. I was asked that question by Mr. Finkel, by Mr. Raphael, by Mr. Mittleman, and by others.

Q. Mr. Raimist, were you present at the meeting held on December 5, 1956? A. Yes.

Q. Can you tell us where this meeting was held? A. This meeting was held at the New York State Board of Mediation, at 270 Broadway.

Q. Can you tell us whether there was a mediator present during this meeting? A. Yes. There was a State Mediator present.

Q. Can you tell us what his name is? A. Mr. Howard Gamser.

Q. Can you tell us the names of the employer representatives and the companies they represent that were present at this meeting? A. Mr. Finkel for Williamsburg, Mr. Mittleman for World Steel, Mr. Graine for Triangle. Of course, Mr. Raphael was there. I know there were two companies that were not present and Mr. Raphael stated his appearance for those two companies. I don't recall without referring to the notes on there whether [53] Mr. Seer was one of them or not. Mr. Seer or Shear. I don't know which one.

Q. Why don't you refer to your notes and give us your recollection after refreshing it. A. Mr. Shear was present for City Steel.

Mr. Newmark: May we have these notes marked for identification?

Mr. Weissman: Yes.

Mr. Newmark: May we have the notes of November 1, 1956 marked?

Mr. Weissman: They were not used as part of the testimony. Therefore we are not offering them for identification.

Mr. Newmark: Do I understand, then, so this record is perfectly clear, that with respect to what has been testified to by the witness to have taken place on November 1, 1956 has been done by independent recollection, without benefit of notes?

The Witness: Correct.

Mr. Weissman: The witness did not refer to his notes while testifying with respect to that date.

I ask that this be marked for identification as General Counsel's Exhibit 15, and note that it purports to be certain notes that were taken at the meeting of December 5, 1956.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 15 for identification.)

[54] Q. (By Mr. Weissman) Mr. Raimist, I show you General Counsel's Exhibit 15 for identification and ask you whether these were the notes that you took during the meeting of December 5, 1956. A. These are the notes I took.

Q. Would you refresh your recollection with respect to those employers that were present at the meeting? A. I will repeat it.

Trial Examiner: Don't repeat. Give us the names you hadn't given us.

The Witness: Mr. Shear was present for City Steel Door; Superior Fireproof Door and Sash and Triangle Steel, Mr. Raphael said he represented them.

Q. Mr. Raimist, were there any negotiations at this meeting with respect to any actual provisions of the contract? A. No.

Q. Could you tell us what occurred at this meeting, on December 5th? A. Yes. I was asked to make a statement as to what had transpired and Mr. Raphael gave the picture the same way, and then Mr. Gamser had asked some questions of both parties to try to clarify the picture, I believe, for himself, or to understand the facts; and since we had another conference scheduled for that afternoon—this only took about an hour and a half—with a member of the association, also with Mr. Gamser, why, Mr. Gamser adjourned the conference and said he [55] would call the next conference.

Q. What you are saying, Mr. Raimist, is that Mr. Gamser said he would call the next conference of this group? A. Yes. He would call the conference of the group, but I made it very clear. I maintained that we wanted to bargain now on an individual company basis. Inasmuch as the position was taken by the employers on November 1st—

Q. Mr. Raimist, with respect to what you stated at the December 5th meeting, you testify now that you told Mr. Gamser that you wanted future negotiations to be on an individual company basis? A. That's correct. I also stated that and told the employers at the November 1st conference. You didn't ask me the question, so I couldn't tell you.

J. L. Raimist, for General Counsel, Direct.

Q. Mr. Raimist, with respect to Mr. Gamser's statement, would you again tell us exactly what he said with respect to future negotiations? A. At this conference, when he adjourned this conference, he said that he will call the next conference.

Q. Did you have a further meeting with Mr. Gamser and Mr. Raphael that day where there was some reference made to future negotiations for your union and the companies that were part of the December 5th meeting? A. After we got through at the conference of this other company, which Mr. Raphael represented the company, this member [56] of the association, and our union, Mr. Gamser said to us that he was seriously thinking of letting this situation cool off a little and waiting until he got further along with the Aetna and American negotiations before he called conferences of any of this group, of the whole group as a whole.

Q. Are you stating, therefore, that there were negotiations going on at that time independent of the multi-employer group, with Aetna and American Steel Buck? A. The independent negotiations with Aetna stated again on or about October 3rd and they were being carried on at this particular time at the New York State Board of Mediation with Mr. Gamser as the Mediator.

Q. Who was representing Aetna and American Steel Buck during this period? A. American Steel Buck hadn't exactly gotten under way yet.

Q. With respect to Aetna. A. Mr. Raphael was the attorney.

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[60] (The document heretofore marked General Counsel's Exhibit 16 for identification was received in evidence.)

Q. (By Mr. Weissman) Mr. Raimist, did you receive a response from the respondent to your letter of March 15th? A. I did.

Mr. Weissman: I ask that this be marked for identification as General Counsel's Exhibit 17.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 17 for identification.)

Q. Mr. Raimist, is this the letter that you received from the respondent dated March 16th? A. That is.

Mr. Weissman: I offer it in evidence.

Trial Examiner: Any objection?

Mr. Raphael: No.

Trial Examiner: There being none, it will be received.

(The document heretofore marked General Counsel's Exhibit No. 17 for identification was received in evidence.)

* * *

[68] Q. (By Mr. Weissman) Mr. Raimist, did you attend a conference on March 29, 1957 with employers of the Association? A. Yes.

Q. Can you tell us where this conference was held? A. At the New York State Board of Mediation.

Q. Can you tell us the mediator that was present at that conference? A. It was called by Mr. Howard Gamser. He officiated or presided at the meeting.

Q. Can you also give us the names of the representa-

tives of the companies that were represented at this meeting? Would you please refer to your notes? A. Do you want to mark them?

Q. Are they the March 29th notes? A. Yes.

Mr. Weissman: That will be marked as General Counsel's Exhibit 22 for identification.

(Thereupon, the documents above referred to were marked General Counsel's Exhibit No. 22 for identification.)

Q. (By Mr. Weissman) Mr. Raimist, are these the notes that you took at the meeting of March 29, 1957? [69] A. That's correct.

Q. Would you please refresh your recollection and tell us the names of the employers that were present at this meeting? A. Mr. Graine of Pioneer, Mr. Shear from City Steel, Mr. Seer from Triangle, Mr. Schaefer from Superior Fireproof, and Mr. Finkel from Williamsburg, and attorney Raphael.

Q. Do you recall whether there was any discussion at this conference with respect to sick leave? Please refer to your notes. A. Yes; at the afternoon session.

Q. Tell us what was said. A. At the afternoon session after the morning recess, Mr. Raphael stated that there were many items that were imponderable as far as being able to agree, that is, reaching an agreement between the respective firms and the union, and among them he listed the sick leave.

Q. Was there any discussion of merit increases at this meeting? A. No.

Q. Did the company make any offer with respect to wages at this meeting? A. Yes. Let me correct that. No, they did not.

Q. The answer is "no"? A. That is correct. I spoke before I looked at it.

Q. Mr. Raimist, did you attend the meeting on April 4, 1957? [70] A. Yes.

Q. Where was this meeting held? A. At the New York State Board of Mediation.

Q. Was Mr. Gamser the mediator? A. Mr. Gamser was the mediator and presided. He was the mediator in charge of the whole thing.

Q. Can you tell us whether the employers made any offer with respect to merit increase provisions? Would you please refer to your notes? A. Yes, they did.

Mr. Raphael: Will you mark the notes for identification, please, and put them in?

Q. (By Mr. Weissman) May I have the notes for the previous meeting as well? A. They were marked.

Q. This is April 4th? A. Yes.

Mr. Weissman: Please mark these as General Counsel's Exhibit 23.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 23 for identification.)

Trial Examiner: Exhibit 23 is the April 4th meeting?

Mr. Weissman: Yes.

Q. (By Mr. Weissman) Mr. Raimist, are these the notes that you took at the April 4th meeting? [71] A. Those are the notes I took at the April 4th meeting.

Q. Would you please tell us, after refreshing your recollection from your notes, whether there was any offer of merit increase made by the employer at this meeting? A. Yes.

Q. Tell us what the employer offered? A. That merit reviews were to be held every six months, at which time the company and the union will discuss same. However, any disagreement regarding same is not subject to arbitration.

Q. Did the company make any offer at this meeting with respect to sick leave? A. Yes.

Q. Would you please tell us the details of the offer? A. The company offered five days sick leave per year.

Q. Can you tell from your notes whether there was any accumulation offered with respect to the sick leave? A. It has no accumulation.

Trial Examiner: You mean they said there would be no accumulation, or nothing was said about accumulation?

The Witness: The offer was on the basis of five days sick leave per year. For people who had been working less than the year something would have to be worked out for lesser time.

Mr. Raphael: Mr. Trial Examiner, I thought you had a [72] pertinent question there.

Trial Examiner: Was anything said about accumulation at all, whether it could be accumulated? Was anything said about it?

The Witness: There was to be no accumulation.

Trial Examiner: I mean that was discussed and the company said that there would be accumulation, or did they say there would not be accumulation?

The Witness: We were told there would be no accumulation.

Trial Examiner: I wasn't clear from your testimony whether nothing was said about accumulation.

The Witness: There definitely would be no accumulation. Just five days per year.

Q. (By Mr. Weissman) Mr. Raimist, was there anything offered with respect to job classification and minimums? A. Yes.

Q. Would you please give us the details? A. A fifty-dollar-per-week minimum for apprentices; a ninety-dollar-per-week minimum for junior. "Junior" wasn't accepted, they wanted to eliminate the word "junior" and call them intermediates. $110-per-week minimum for seniors. The minimum-wage question for specialist was left open at this time. The employees would be on certain progressions, but only up to the ninety-dollar rate.

Q. Would you tell us from your notes if there was any wage [73] increase offered? A. I am coming to that.

Q. Tell us exactly the wage increases that were offered. A. We were also told—before I get into that, I want to finish this part. Is that all right?

Q. Go ahead.

Trial Examiner: Was all this on an association-wide basis, or individual?

The Witness: This was with the mediator. Because so many people were involved and calling us together, we would not object. But in the future we made it clear this was on an individual-company basis.

Trial Examiner: With whom were you discussing these rates that you just discussed? Who made that offer?

The Witness: These wage rates?

Trial Examiner: Yes.

The Witness: The mediator brought that up.

Trial Examiner: This was the mediator's suggestion or recommendation?

The Witness: No. This was his offer.

Trial Examiner: His offer?

The Witness: Pardon me. This was his message from the employers.

Trial Examiner: Association-wide?

The Witness: On an individual basis; but they were all [74] to be the same. He told us that.

Q. (By Mr. Weissman) Would you go ahead, Mr. Raimist? A. That the proposal from the employer was seven and a half dollars per week general increase, including fringes which are not covered below, which I will read from the rest and are included in this, and are to be effective April 4, 1957, or the date of signing if it is at a later date; in other words, to be effective the date the decision is made. This was to be part of a three-year contract. There would be a five-dollar increase after one year and a five-dollar increase effective the third year, after two years, except that commencing with the second year's increase, or the first five-dollar increase—that is the first increase after one year—the increase does not apply to those employees who get ninety dollars per week or over. It will only apply to employees receiving less than ninety dollars per week.

We asked very carefully what would happen. Supposing a man was getting, say, $85 at this time, that is, at the time of the seven and a half dollar increase the first year. That would bring him up to above the ninety dollars. Since he is now in the under-ninety-dollar group, would he receive

the five and five the two succeeding years. The answer was no, that once he reached ninety dollars he could not go above ninety dollars.

This fringe package, or the seven and a half dollars [75] which includes fringes not below, the ones that were covered below were the vacation problem, which was one week for one year, two weeks after two years of service, and on an annual progression after that of one day per year up to three weeks.

There is one other thing on money. We were also told that the present employees who are working out of classification shall be brought up at five-dollar intervals, or five-dollar increments or jumps, at six-month intervals, until they reached their proper classification. This may be in addition to the other adjustments if they fall into other class adjustments.

In discussing or asking questions about it, it was explained that definitely any man who was working out of classification would not be reclassified immediately but only in these six-months interval jumps.

Q. Mr. Raimist, do you know whether the employer made any kind of an offer with respect to the general note, specifically the statement that the employee would not lose benefits or suffer reductions in salary because of the contract? A. Yes. They told us they were approved, that they were okayed. That was given to us actually as the proposal.

[76] Q. Mr. Raimist, did you attend a conference on April 11, 1957? A. Yes.

Q. Was this also held at the New York State Board of Mediation? A. That's right.

Q. Was Mr. Gamser also the Mediator at this conference? A. That's right.

Q. Can you tell from your notes the names of the employer representatives that were present at this conference? While we are doing that, let us identify that for the record.

Mr. Weissman: Please mark this as General Counsel's Exhibit 24.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 24 for identification.)

Q. Are these the notes you made during the April 11 meeting? A. They are.

Q. Would you now answer the question, please?

The Witness: Mr. Stenographer, would you read the question?

(Question read.)

The Witness: Yes. Mr. Finkel of Williamsburg, Mr. Seer of Triangle, Mr. Shear from City Steel, Mr. Schaefer from Superior Fireproof, Mr. Graine from Pioneer, and Attorney Raphael.

[77] Q. At this conference, Mr. Raimist, did you make any statement to Mr. Finkel concerning wages?

Mr. Raphael: To Mr. Finkel specifically?

Mr. Weissman: To Mr. Finkel specifically.

A. At this conference?

Q. Yes. A. No.

Q. Do you have any recollection of saying anything to Mr. Finkel about a—

Mr. Raphael: I am going to object to anything that is leading and suggestive. We are at a crucial

point at this hearing, Mr. Trial Examiner. I think Mr. Weissman should know that the appropriate question to ask a man is to tell us what was discussed at this meeting, without leading him, unless this witness indicates an inability to cope with the question. But we haven't come up to that yet. He has minutes of the meeting. I think he can refresh his recollection as to the substance of the discussions at that meeting.

Trial Examiner: Did you have any discussion with Mr. Finkel at that meeting?

The Witness: Let me ask a question. Am I out of order if I say something different than just answering this thing? I want to clarify it, but I don't want to talk out of turn.

Trial Examiner: You may clarify a previous answer, but it is not proper for you to ask questions or volunteer in- [78] formation.

Did you have any conversation with Mr. Finkel at that meeting?

The Witness: Yes. There were several conversations, some pertaining to the negotiations in progress, but they did not involve money.

Q. What was the subject of the negotiations on April 11, 1957?

Mr. Raphael: Is your present question now a general question?

Mr. Weissman: That's correct.

Mr. Raphael: As to all the people that were present?

Mr. Weissman: That's correct.

Mr. Raphael: I want to make it clear, because you are shifting from one form of question to the other.

A. The subjects of discussion at the conference were seniority and discharge items; also my statement for the record that today's conference—again I am repeating myself—is not association-wide but on a single company basis, as previously claimed by the union. Then towards the end of the conference I addressed myself to Mr. Finkel about the fact that he improperly granted unilateral wage increases to certain employees and I also claimed that in doing so he was not only acting not in good faith with the union, but he was not acting in good faith towards his fellow employers. He replied to this [79] by stating that his fellow employers knew everything that he did, he had discussed it with them before he did it. Then I made remarks concerning the fact that it looked to us as if they were definitely trying to—I can't give you the verbatim thing, but as if they were trying, instead of bargaining in good faith, working against the union and trying to disrupt the union in their respective plants.

Q. At the April 11th meeting, did the employers state that they would prepare written counterproposals? A. I know it was stated at one of the meetings, but not at this one, as far as I can recall.

Q. Did you attend a meeting on May 1, 1957? A. I did.

Q. I now would like to ask you one question which does not concern this meeting. Do you recall—and this is legally a matter of record, anyway—filing the unfair labor practice charge in this case several days after the April

11th meeting? A. I did. I think it was the 15th, or something like that.

Q. Going back to the previous question, which was the May 1st conference, was this conference also held at the New York State Board of Mediation? A. Yes.

Q. Also with Mr. Gamser? A. That's correct.

Q. Can you tell from your notes of this meeting the names of [80] the companies and their representatives that were present? A. No.

Mr. Weissman: At this time I would like to mark this for identification as General Counsel's Exhibit 25.

(Therenpon the document above referred to was marked General Counsel's Exhibit No. 25 for identification.)

Q. Mr. Raimist, I ask you whether General Counsel's Exhibit 25 are the notes which you took during the May 1st meeting at the New York State Board of Mediation. A. Yes.

Q. Would you please refresh your recollection from those notes and tell us the names of the employers that were present and their representatives. A. Mr. Finkel, Williamsburg; Mr. Graine, Pioneer; Mr. Shear, City Steel; Seer of Triangle; and Schaefer of Superior.

Q. Mr. Raimist, what was the general topic of discussion at this meeting? A. First we met separately and then Mr. Gamser called us in together. The topic was—I again stated that we insist on separate company negotiations. Then there was a discussion about the seniority and the discharge question.

Q. Was it at this meeting that the employers stated that they would provide a written counterproposal? A.

There was a recess called and then upon reconvening, Mr. [81] Gamser met with each side. Mr. Gamser stated that the company wants to wait another week and would now give us an agreement proposal containing their position, including money. I stated why was all this held up until now. We were then told that the companies were trying to get their counterproposals to us before the next meeting scheduled for May 9, 1957, 1:30 p. m.

Trial Examiner: May 9th?

The Witness: May 9th.

Mr. Weissman: This meeting is May 1st.

The Witness: May 1st.

I wanted to receive the companies' proposals at least 48 hours before the meeting was held so that we could digest it, otherwise it wouldn't serve any purpose, and it was agreed.

Q. Did you receive the employers' written counterproposals at a subsequent date? A. I did.

Mr. Weissman: I ask that this be marked General Counsel's Exhibit 26 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 26 for identification.)

Q. I show you General Counsel's Exhibit 26 for identification and ask you whether this is the written counterproposal which you received from Mr. Raphael? [82] A. I did.

Mr. Weissman: I offer it in evidence as General Counsel's Exhibit 26.

Trial Examiner: Approximately when did you receive it?

The Witness: On the 8th of May.

Mr. Raphael: No objection.

Trial Examiner: Are you offering it in evidence?

Mr. Weissman: I am offering it in evidence, but I would like to ask Mr. Raphael to agree that this is an authentic copy, because it bears no signature at this point.

Mr. Raphael: Well, the agreement was never signed. This was merely a proposal—

The Witness: This was a proposal.

Mr. Raphael: —that we had submitted, as the witness will testify.

Mr. Weissman: You will agree, therefore, that this was the copy that was in fact sent?

Mr. Raphael: I have no objection.

Trial Examiner: It may be received.

(The document heretofore marked General Counsel's Exhibit No. 26 for identification was received in evidence.)

Trial Examiner: Was there a covering letter with this?

Mr. Raphael: There was a covering letter.

The Witness: I don't have it here with me. I don't [83] recall. It was delivered by hand.

Mr. Raphael: It was delivered by hand. There was a letter addressed to Howard Gamser, at the State Mediation Board, and the letter was dated May 8th. I will read the letter into the record, because a copy of that letter was sent to Mr. Raimist's office with a copy of the agreement.

Mr. Weissman: Before that is read into the rec-

ord, I would like to ask Mr. Raimist whether he did receive such a letter. May I do so?

Trial Examiner: Yes.

Q. (By Mr. Weissman) Mr. Raimist, did you receive any covering letter with the written counterproposal? A. I honestly can't say yes or no. I imagine I did.

Mr. Raphael: There is nothing in that letter, Mr. Weissman, that is prejudicial to anybody. It is an innocuous letter.

Q. Mr. Raimist, did you attend the conference that was held on May 13, 1957 at the New York State Board of Mediation? A. I did.

Q. With Mr. Gamser present? A. Yes.

Trial Examiner: There was no meeting on the 9th?

Mr. Weissman: There was no meeting on the 9th.

The Witness: It was changed. Mr. Finkel asked for a postponement.

[84] Mr. Weissman: I request the reporter mark this as General Counsel's Exhibit 27 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 27 for identification.)

Q. (By Mr. Weissman) Is General Counsel's Exhibit 27 the notes you took at the meeting of May 13, 1957? A. That's right.

Q. Can you tell us whether there was any discussion at this meeting with respect to merit increase provisions? A. This meeting covered a general discussion, in that at the opening of the meeting I stated that each company individually, since we were told each one was submitting the

identical contract, had reneged on their April 4th proposals to us and answers which were given to us by Mr. Gamser on the agreements.

Q. Specifically with respect to merit increases, was there any discussion as to that? A. If there were, I don't recall. I just made a couple of notes on this meeting.

Q. Would you please tell us what occurred at the meeting? A. I stated to them that they had reneged on their April 4, 1957 agreements and proposals and suggested arbitration by a satisfactory agency immediately, or else the union would have to take the next step to protect itself.

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[85] Q. (By Mr. Weissman) Mr. Raimist, during this entire period of time, from July of 1956 until May of 1957, had anyone from the respondent ever discussed with you projected merit increases?

Mr. Raphael: I am going to object to the form of the question. I don't understand it.

Mr. Weissman: I will withdraw the question and rephrase it.

Q. Did any representative of the respondent ever tell you that they intended to give out merit increases? A. No.

Q. Did any representative of the respondent ever talk to you and tell you that they intend to give wage increases? A. No.

Q. Did anyone from the respondent ever come to you and talk to you and tell you that they intend to make changes in sick leave at the respondent's company? A. No. If they had, I wouldn't have sent those letters.

Mr. Raphael: I will move to strike that out as irresponsive.

Trial Examiner: It may be stricken.

Mr. Weissman: I ask Mr. Raphael whether he has the original of a letter sent to the respondent dated May 17, 1957.

Mr. Raphael: We have.

Q. (By Mr. Weissman) Mr. Raimist, were there any bargaining conferences held with the respondent after May 13, 1957? [86] A. No.

Q. I ask that this letter dated May 17, 1957 be marked for identification as General Counsel's Exhibit 28 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 28 for identification.)

Q. (By Mr. Weissman) Mr. Raimist, subsequent to May 13, 1957, do you recall making a written request for individual bargaining with respect to Williamsburg Steel Products? A. Yes.

Q. I show you General Counsel's Exhibit 28 for identification and ask you whether this is the letter you sent to the respondent, making such a request? A. Yes.

Mr. Weissman: May the record show what I am showing Mr. Raimist at this time is a copy. Mr. Raphael has stated for the record he has the original.

You will stipulate this is a true copy of the original; is that correct?

Mr. Raphael: So conceded.

Mr. Weissman: I now offer General Counsel's Exhibit 28 into evidence.

Mr. Raphael: I have no objection.

Trial Examiner: It may be received.

[87] (The document heretofore marked General Counsel's Exhibit No. 28 for identification was received in evidence.)

Q. (By Mr. Weissman) Did you ever receive a response from the respondent with respect to that letter? A. No.

Mr. Raphael: He received no reply to this letter?

The Witness: Not that I can remember. Let me say no to the best of my recollection at the moment.

Mr. Raphael: I would suggest that you look through your file, Mr. Raimist, because we have a letter that not only went to your local union, but it went to Mr. Stephens, the president of your international; to the State Board of Mediation. I know from my own knowledge that this letter has reached these different places. I would suggest you look at your file.

Mr. Weissman: We appreciate the fact that you are pointing this out to us, Mr. Raphael. I think that Mr. Raimist should make a further search to determine whether there is such a letter.

Mr. Raphael: We are in the habit of answering our mail, especially letters of this type.

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[88] Mr. Weissman: Mr. Trial Examiner, in view of the fact that there is some question here as to whether there was a letter sent in answer to this one and subject to Mr. Raimist searching further, I would like to withdraw the prior offer, which would be 28.

Trial Examiner: It has been received.

Mr. Newmark: It has been received without objection.

Mr. Raphael: The only thing we can do, Mr. Trial Examiner, is, when our case is up, we will serve him with a notice to produce and lay the groundwork for it, and if he doesn't have it, we will take secondary evidence as to it.

Trial Examiner: All right.

Proceed.

Q. (By Mr. Weissman) During these many months of negotiations, Mr. Raimist, do you recall making a protest to Mr. Finkel about certain merit increases that had been granted by that company?

Mr. Raphael: I am going to object to the form of the question.

Trial Examiner: You can answer that yes or no.

The Witness: Yes.

Q. Would you tell us what you said?

Mr. Raphael: Objected to, unless the time and place is fixed.

Trial Examiner: Yes. You may fix the time and place [89] as closely as you can.

The Witness: I cannot fix the time and place because it happened on several occasions towards the end of meetings, when meetings were breaking up.

Q. (By Mr. Weissman) Mr. Raimist, did they occur during negotiation meetings, during the meetings themselves? A. Towards the end of the meetings, the same as the incident that I described that occurred at the previous meeting.

Q. Can you fix the dates when you made these statements? A. If I could, I would. I don't make notes of every item. It is humanly impossible to write and listen and talk at the same time. I just make the highlight notes.

Q. But you do recollect making the statements? A. I do, because that is my general policy when things of that type are done.

Mr. Raphael: I am going to object to the question and I am going to move to strike out the answer.

Trial Examiner: The later part of the answer may be stricken.

Q. (By Mr. Weissman) Would you tell us, Mr. Raimist, what you said to Mr. Finkel?

Mr. Raphael: I am going to object to this, Mr. Trial Examiner. Unless we can fix a time and place we are in no position to refute this testimony. We have no idea where it is [90] or what it is.

Trial Examiner: He has fixed it as close as he apparently says he can fix it. He testifies that it took place near the end of some of these conferences and it was during one or more of these conferences when the subject was discussed. If the witness says that is the best he can do as to fixing the time, we will have to accept it at that and weigh it accordingly.

Q. (By Mr. Weissman) Would you now tell us what you said at these times? A. The nature of my statements were that it was an improper and unfair thing to do because it tended to destroy the bargaining unit.

Mr. Raphael: I am going to move to strike out the answer as irresponsive: The nature of. It is a summarization, I submit, Mr. Trial Examiner.

Stenographic Transcript of Testimony at Hearing of January 29, 1959.
J. L. Raimist, for General Counsel, Cross.

Trial Examiner: Give us as close as you can anything that you said and anything said by the respondent pertaining to this subject.

The Witness: I said that giving out any increases during negotiations is not proper; it tends to destroy the unity of the bargaining unit; it tends to destroy the union. It was dropped right there. There was no answer or no general arguments or anything like that.

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[91] **Stenographic Transcript of Testimony at Hearing of January 29, 1959.**

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[92] PROCEEDINGS

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J. LAWRENCE RAIMIST, resumed as a witness for and on behalf of the General Counsel, and having been previously duly sworn, was examined and testified further as follows:

Cross Examination:

Q. (By Mr. Raphael) With respect to Exhibit 9, which is the letter of July 11th, was a letter similar in form to this sent to the other employers for whom you had certifications? A. Yes.

Q. With respect to Exhibit 10, am I correct in stating

that this form went to the other employers as well? A. 10 is the listing of the demands?

Q. Yes. A. Yes.

Mr. Weissman: Mr. Examiner, may we know which employers?

Mr. Raphael: I said the employers for whom you had certifications in the hollow metal industries. We are only talking of the employers covered by this witness's testimony.

Q. (By Mr. Raphael) Did you send it to the Triangle Steel Products Company? A. Yes, sir.

[93] Q. Did you send it to the Williamsburg Steel Products Company? A. Yes, sir.

Q. Did you send it to Superior Fire Proof Door and Sash Company? A. Yes, sir.

Q. Did you send it to Pioneer Fire Proof Door and Sash Company? A. Yes.

Q. And all the other employers to whom you testified in this case? A. Yes.

Q. Similar in form to Exhibit 10; is that correct? A. Correct.

Q. Is it a fair statement, Mr. Raimist, that the general objective of this was to evolve a formula under which all benefits would be the same for all the employers who were under negotiations with you at the time? A. With the exception of the general wage increase.

Q. But with respect to merits increases, severance pay, pension plan, welfare plan, arbitration plan, number of hours per week, vacations, holidays, and all other benefits that you have listed as demands in Exhibit 10, that you wanted uniformity for? A. That's right.

[94] Q. One of the items that we have been talking about in your testimony has been Note I to general notes of Exhibit 10, which reads: "No employee shall lose any benefits or suffer any reduction of salary by virtue of the signing and the application of this agreement."

Is that correct? A. That is correct.

Q. What did you intend by that clause? A. That once a contract was executed, the employee shall not be demoted as a result of resulting classifications, nor shall any of the benefits which the employees had enjoyed before be abolished once the contract is executed.

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[107] (The document above referred to was marked as Respondent's Exhibit No. 2 and was received in evidence.)

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[153] ALFRED FINKEL, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Weissman) Please give the reporter your full name and address? A. Alfred Finkel, 28 Exeter Street, Brooklyn, New York.

Mr. Weissman: The company was subpoenaed for such books and records or other documents which will show the number of names, the department and job classifications and weekly records of earnings of all employees employed by the company in the appropriate unit.

Do you have that information?

Mr. Raphael: We have that here, sir.

Mr. Weissman: May I have it?

[154] Mr. Raphael: I have given you a copy.

Mr. Weissman: Are you referring to these photostatic copies here?

Mr. Raphael: Yes.

Q. (By Mr. Weissman) Mr. Finkel, are you the secretary of Williamsburg Steel Products Company?

Mr. Raphael: I object to that. I think you will find that the respondents are three individuals operating as Williamsburg Steel Products Company. There is no secretary here, Mr. Weissman.

Q. (By Mr. Weissman) Would you tell us what your title is? A. A partner.

Q. In your duties for the company, do you handle labor relations and negotiations for the company? A. At times, I do.

Q. Do you also handle personnel matters for the company? A. At times I do; not all personnel matters, certain personnel matters.

Q. Are you acquainted with the question of wage increases that may have been given out at different times since July of 1956? A. I am acquainted with it.

Q. I show you these photostats and ask you whether you can identify these photostats. A. This, I can.

[155] Q. Will you please tell us what they are?

Trial Examiner: I think they better be marked for identification.

Mr. Weissman: All right.

Trial Examiner: That will be General Counsel's 30 for identification.

Mr. Weissman: They are in three parts. I suggest we mark them 30-A, B and C.

30-A represents certain payroll records running from October, 1951 to January 1, 1959, and the first name on the page, the first employee, is an individual by the name of A. Furst;

30-B would be the period of October 1, 1955 to January 1, 1959, and the first individual is Charles O'Regan;

30-C, April 1, 1957 to January 1, 1959, beginning with an employee, A. Munoz.

(The documents above referred to were marked as General Counsel's Exhibits Nos. 30-A, B and C for identification.)

Q. (By Mr. Weissman) Mr. Finkel, would you examine these records and would you tell us whether in July, 1956 any employees in the certified unit were granted increases by the company?

Mr. Raphael: I will object to that as not within the scope of the pleadings. Certain specified charges have been [156] made, I believe, under Allegation No. 10-B. Allegation 10-B says:

"In or about April, 1957, and at various times thereafter to date, the Respondent Employer unilaterally changed existing wage rates and other terms and conditions of employment of employees in the unit described above in Paragraph 7."

We submit to you that that is the area within which General Counsel can inquire.

Mr. Weissman: Mr. Trial Examiner, the charge in this case was filed on April 16th, 1957, which

would bring it back to October 16th, 1956. We will grant that prior to that time it is just a matter of background and a matter of showing a certain continuity with respect to any actions after the election which was held on June 26th, 1956, and I request that this evidence be received for that purpose.

Trial Examiner: What date are you inquiring about?

Mr. Weissman: July of 1956.

Trial Examiner: Of course, it is clear it cannot form the basis of any unfair labor practice finding, but it may be material, so the objection is overruled.

Mr. Weissman: Will you answer my question, Mr. Finkel?

(Question read.)

A. There were some.

Q. Can you tell us how many? [157] A. These sheets would indicate that there was one increase given.

Q. How much was that in terms of money? A. A five-dollar increase.

Q. Was this increase given based on a review of this individual's work? A. I imagine it was part of a review.

Q. And it was given for good work and meritorious work? A. I wouldn't know why it was given. It was given as part of review.

Q. There was a customary review at about that time? A. That's right.

Q. Referring to October, 1956, can you tell us whether increases in wages were granted in October of 1956?

Mr. Raphael: Same objection as heretofore.

Trial Examiner: The same ruling.

A. There were.

Q. Can you tell us how many, and the amounts in money? A. Shall I read down the amounts?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: The proceeding will be in order,

Mr. Weissman: Mr. Examiner, I think the parties are prepared to stipulate that on October 1st, 1956, the following wage increases were granted by the company:

[158] One increase at $7.50; fifteen increases at five dollars; one increase at four dollars; thirteen increases at three dollars; two increases at $2.50; and two increases at seven dollars.

On January 1st, 1957, one increase at ten dollars; one increase at seven dollars; fourteen increases at five dollars; three increases at three dollars, and one increase at two dollars.

Mr. Raphael, can we stipulate to those facts?

Mr. Raphael: Yes; reserving our right to explain, of course.

Trial Examiner: I take it that these were increases given to people named in the unit described in the complaint?

Mr. Weissman: Yes; to the employees in the certified unit.

Q. (By Mr. Weissman) Mr. Finkel, were these increases given on the basis of the review of the work of the employees in the certified unit? A. They were.

Q. This was a three-monthly review, in the sense that we have gone from July to October to January? A. Well, we reviewed constantly, quarterly and semi-annually and annually.

Q. This was to reward employees for good work done?

Mr. Raphael: I will object to the form of the question. [159] I submit that the witness be asked what the basis of these increases was.

Mr. Weissman: I have asked a proper question.

Mr. Raphael: It is a leading question.

Mr. Weissman: I expected it to be a leading question.

Trial Examiner: Yes, it is cross examination.

Overruled.

Read the question.

(Question read.)

A. Not necessarily. It might have been a change of classification or different type of job that the man was handling. Each individual case was reviewed as to the scope of the work that the man was doing.

Q. At least in some of the cases it would include a reward for work?

Mr. Raphael: Objection.

Trial Examiner: You may answer.

A. I don't think it is a reward. A man is being paid for a job that he is doing. You are not rewarding him for anything. You are paying him a salary for a job he is doing. If he is doing "A" type of job, he is getting "A" type of pay. So I don't think "reward" is the proper terminology.

Q. If you have an employee that is doing a good job, do you give him a wage increase to show your appreciation?

A. No. You gave him a wage increase because he is doing a [160] good job.

Trial Examiner: Approximately how many employees were in the entire unit during this period?

The Witness: Approximately fifty, sir.

Q. (By Mr. Weissman) Mr. Finkel, on April 5th, 1957, did the company announce to the employees in the certified unit the following schedule, wage schedule, to commence April 1st, 1957: Employees that were earning up to seventy-five dollars a week to receive five dollars increase every three months; employees earning seventy-five dollars to ninety dollars, to receive five dollars increase every six months; and employees earning over ninety dollars to receive increases based on merit? A. May I see that?

Q. No. I am asking you from your memory. Do you recall if this wage policy was announced to employees? A. On what date?

Q. On April 5th, 1957. A. I don't recall it on April 5th.

Q. Do you recall it at approximately that date? A. I don't know personally that an announcement of that type was made.

Q. Do you know whether there was a new wage plan put into effect at about that time?

Mr. Raphael: I will object to the form of the question [161] unless we are told what the new wage plan was and about what time it was that it was put in.

Trial Examiner: Objection overruled.

A. I don't know of any wage plan along that line that you just described in your question.

Q. Would you please refer to your payroll records and tell me whether in April of 1957 increases were given to employees? A. They were.

Q. Can you tell me from the payroll how many employees received five-dollar increases that month? A. I just sketched it out for you. May I have that piece of paper?

Q. Yes (*handing document to the witness*). A. It seems to be thirty-two people who got five-dollar increases.

Q. Can you tell me from your payroll how many of these employees had been receiving up to seventy-five dollars a week prior to the granting of those increases? A. You will have to give me some time on that. You said up to seventy-five dollars?

Q. That is correct.

Mr. Raphael: This will take time.

Mr. Weissman: I have time.

A. That would be twelve.

Q. Twelve employees who received five dollars who had been [162] making up to seventy-five dollars a week; is that correct? A. Yes.

Q. Will you tell us how many employees who had been earning from seventy-five dollars to ninety dollars received five-dollar increases that month? A. There seem to be six.

Q. Can you tell me whether any other employees—whether there were any other amounts other than five dollars given to any other employees who were making up to ninety dollars prior to April 5th of 1957?

Mr. Raphael: We have had testimony. There has been a concession here up to that point. You are dealing with the beginning of April and up to April you have given figures for the record.

Mr. Weissman: I think you misunderstood my question.

Mr. Raphael: Maybe you better restate it. You are now talking prior to April?

Mr. Weissman: No. I am talking about April.

Mr. Raphael: Restate your question.

Mr. Weissman: Perhaps the witness understands it.

Mr. Raphael: You said prior to April in your question.

Mr. Weissman: I will restate the question for the benefit of Mr. Raphael.

Mr. Raphael: And for the witness.

Q. (By Mr. Weissman) Going through your payroll records [163] for April of 1957, could you tell me whether any employee who up to that time had been earning under ninety dollars received an increase other than five dollars? A. You are not consistent. You mean from seventy-five dollars to ninety dollars, because you are in a different category now according to your previous question.

Q. I said up to ninety dollars. A. There were others.

Q. Will you tell me how many?

Trial Examiner: Give him the amounts and the increase.

A. On this page, the page beginning with O'Regan, probably Page 2 in the exhibit, there is one $7.50; two, $7.50. Now I see a three-dollar one up to ninety dollars.

Q. I said up to ninety dollars. A. Does that include ninety dollars, or is it up to $89.99?

Q. Give us the amount of money they were making in April of 1956 and the amount of the increase. A. One was making fifty dollars and went to $57.50; another went from fifty dollars to $57.50; one went from ninety dollars to ninety-three dollars.

Q. Are there any others? A. Yes. One went from eighty dollars to $82.50; one went from sixty-nine dollars to seventy-six dollars. There were also some omissions, people in that category who didn't get any increases.

[164] Q. I have just asked you with respect to the ones that did get increases. Are there any others? A. You are talking up to and including ninety dollars?

Q. Correct. A. There were five others who received amounts other than the five dollars.

Q. Will you tell us how much, please, and the amounts?

Trial Examiner: This is some of the information you have already given us; is that right?

The Witness: Yes.

One went from ninety dollars to ninety-three dollars; one went from fifty dollars to $57.50; one went from fifty dollars to $57.50; one from eighty dollars to $82.50; one from sixty-nine dollars to seventy-six dollars. I think that's it.

Q. (By Mr. Weissman) There are actually five or six other changes, other increases given out other than five dollars? A. Whatever I just read. How many does that total?

Mr. Raphael: I object to the paraphrasing of a witness's testimony. The record speaks for itself.

Trial Examiner: That's right.

Q. (By Mr. Weissman) Checking your payroll records for April, will you tell us the number of increases given to employees who earned over ninety dollars, and tell us the exact amount of the increases in each case?

[165] Mr. Raphael: That is April now?

Mr. Weissman: Yes.

A. I'm sorry. The information, now that I go over this

thing more carefully—there are probably two or three more in addition to the six that I just read. I find that now there were five-dollar increases that belong under ninety dollars. I see a $76.50 to $92.50 that I didn't notice before; I see a ninety dollars to a ninety-five dollars that I didn't see before, so that probably brings it up to eight.

Q. Would you continue with your compilation with respect to employees making over ninety dollars?

Mr. Raphael: May I submit to you, Mr. Examiner, the evidence is that thirty-two people got a five-dollar increase. It has now been broken down to twelve up to seventy-five dollars, eight additional up to ninety dollars, which would be a total of twenty. The twelve would be the balance of the thirty-two.

Mr. Weissman: But there may be other increases other than five.

Mr. Raphael: I see.

A. I count eleven over ninety dollars at a five-dollar increase, but I also noticed another one from eighty-eight dollars to ninety-three dollars that would go into your other question of up to ninety dollars. So that would make [166] it nine.

Q. Are there any other increases other than five dollars to employees over ninety dollars? A. Yes, there are.

Q. Would you tell us the amounts, and how many? A. Shall this include those that there are no increases?

Q. No. I am just asking for those who were given increases who were making over ninety dollars, and the amounts of the increase. A. One from $116 to $120, four-dollar increase; one went from ninety-six dollars to ninety-nine dollars, a three-dollar increase; here is another three-

dollar increase that I think belongs—I don't know whether I picked it up. It was from ninety dollars to ninety-five dollars; it was a three-dollar increase. I think that's it.

Q. Now, Mr. Finkel, referring to July of 1957, can you give us the total of increases that were given and the breakdown?

Trial Examiner: Are you going to ask for the same information as you did about April?

Mr. Weissman: No. I will ask for an overall information at this point.

A. July, there was another review. I think I see—I don't think the July review was made until August. As I am studying these sheets, it would seem to me that the July [167] review was not done until August.

Q. Were there any increases given in August, then, other than July? A. Yes, there were some.

Q. Would you give us a compilation of those increases? A. Tell me how you want it.

Q. Broken down by amounts and numbers. A. Numbers and amounts of increases?

Q. That is correct.

Trial Examiner: Wouldn't it be easier to give each one instead of going back over the pages?

Mr. Weissman: I have no objection to that.

Trial Examiner: As you come across any increase in July or August, give us the amounts.

Do you want the salary grade or just the amount of the increase?

Mr. Weissman: At this point I just want the amount of the increase.

Trial Examiner: You might as well get them all now.

Mr. Raphael: If you don't get it, I will get them. Get through with it.

Mr. Weissman: All right. I have no objection.

Trial Examiner: Whenever you find an increase, give us the amount of the existing salary and the increase.

The Witness: The existing salary before the increase?

[168] Trial Examiner: Yes.

A. $140, a ten-dollar increase to $150;

$145, a ten-dollar increase to $155.

Q. Did you say one forty-dollar employees going to fifty dollars? Is that what you have stated? A. No; $145 to $155.

Q. The second was $145 to $155? A. That's right.

Q. Did you have a third one listed? A. I didn't say anything yet.

Ninety-eight dollars to $105, that would be a seven-dollar increase;

$130 to $145, that is a fifteen-dollar increase;

Here is one that went from $137 to $146.80. That is $9.80 increase;

$108 to $118;

$124 to $135, that is an eleven-dollar increase;

$111 to $121, that is a ten-dollar increase;

$110 to $120, a ten-dollar increase;

$113 to $123, a ten-dollar increase;

$102 to $115, a thirteen-dollar increase;

$110 to $125, a fifteen-dollar increase;

$110 to $120, a ten-dollar increase;

$105 to $115, a ten-dollar increase;

$100 to $110, a ten-dollar increase;

[169] $97.50 to $105, a $7.50 increase;
$124 to $134, a ten-dollar increase;
$98 to $105.50, that is a $7.50 increase;
$97.50 to $105, $7.50 increase;
$92.50 to $97.50, a five dollar increase;
$113 to $128, a fifteen-dollar increase;
$125 to $135, a ten-dollar increase;
$83 to $88.50, a $5.50 increase;
$95 to $102.50, would be a $7.50 increase;
$80 to $87.50 is a $7.50 increase;
$87 to $94.50, $7.50 increase;
$80 to $87.50, a $7.50 increase;
$84 to $91.50, $7.50 increase;
$68 to $73, a five dollar increase;
$78 to $90.50, a $12.50 increase;
$80 to $87.50, a $7.50 increase;
$75 to $87.50, a $12.50 increase;
$96 to $105.50, $9.50 increase;
$73 to $78 is a five-dollar increase;
$70 to $75 is a five-dollar increase;
$70 to $75 is a five-dollar increase;
$65 to $70 is a five-dollar increase;
$70 to $75 is a five-dollar increase;
$70 to $75 is a five-dollar increase;
$55 to $60 is a five dollar increase;
[170] $65 to $70, a five dollar increase;
$65 to $70, a five dollar increase;
$55 to $60, a five-dollar increase;
$55 to $60, a five-dollar increase;
$55 to $60, a five dollar increase.
That's it.

Q. Mr. Finkel, you mentioned an increase that was

from $80 to $87.50, a $7.50 increase. I would like to clarify that. It was the twenty-fifth item. A. $95 to $102.50.

Q. The one after that. A. $80 to $87.50.

Q. Could you tell us the name of that individual, please? A. Fred Areizago.

Q. Do you know the employee? A. I know the name; I don't know the employee.

Q. Do you know whether he is in the certified unit? A. I believe he is.

Q. But you don't know of your own knowledge? A. No.

Trial Examiner: Aren't all these employees in the certified unit?

Mr. Weissman: This is what we had subpoenaed, and I want to be sure that it is so.

Trial Examiner: When you asked about that one, I wondered [171] if there was any doubt. They are all in the unit.

Q. (By Mr. Weissman) We have been discussing July and August of 1957.

Would you do the same for October of 1957? A. $88.50 to $93.50, a five-dollar increase;

$87.50 to $92.50, a five-dollar increase;

$94.50 to $99.50, a five-dollar increase;

$87.50 to $92.50, a five-dollar increase;

$73 to $78, a five dollar increase;

$87.50 to $92.50, a five-dollar increase;

$78 to $83, a five-dollar increase;

$70 to $75, a five dollar increase;

$75 to $80, a five-dollar increase;

$60 to $65, a five-dollar increase;

$70 to $75, a five-dollar increase;

$70 to $75, a five-dollar increase;
$60 to $65, a five-dollar increase;
$60 to $65, a five-dollar increase;
$60 to $65, a five-dollar increase;
$55 to $60, a five-dollar increase;
$60 to $65, a five-dollar increase;
$75 to $80, a five-dollar increase;
$85 to $90, a five-dollar increase.

Q. Any other increases in October of 1957? A. You are just talking pertaining to the unit?

[172] Q. Yes, in this certified unit. A. No.

Q. Will you please do the same for January of 1958? A. $105 to $110, a five-dollar increase;
$105 to 110, five-dollar increase;
$105.50 to $110.50, a five-dollar increase;
$105 to $110, a five-dollar increase;
$97.50 to $102.50, a five-dollar increase;
$102.50 to $107.50, a five-dollar increase;
$91.50 to $96.50, a five-dollar increase;
$90.50 to $95.50, five-dollar increase;
$87.50 to $92.50, a five-dollar increase;
$105.50 to $110.50, a five-dollar increase;
$83 to $88, a five-dollar increase;
$75 to $80, a five-dollar increase;
$75 to $80, a five-dollar increase;
$80 to $85, a five-dollar increase;
$75 to $80, a five-dollar increase;
$65 to $70, a five-dollar increase;
$75 to $80, a five-dollar increase;
$65 to $70, a five-dollar increase;
$65 to $70, a five-dollar increase;
$65 to $70, a five-dollar increase;

$60 to $65, a five-dollar increase;
$65 to $70, a five-dollar increase;
[173] $95 to $100, a five-dollar increase;
$55 to $60, a five-dollar increase;
$55 to $60, a five-dollar increase;
$60 to $65, a five-dollar increase;
$55 to $60, a five-dollar increase;
$55 to $60, five-dollar increase.

Q. Referring to the April increases, the April, 1957 increases, do you know specifically what date they were announced to the employees? A. I don't know that they were announced.

Q. The employees certainly were aware that they were getting an increase; is that correct? A. I wouldn't know.

Q. You just know that the increases were given? A. I know when the checks are made up that the increases are given.

Trial Examiner: Weren't there any discussions among the partners as to what salary adjustments would be made for the employees?

The Witness: I personally wouldn't be involved in that.

Trial Examiner: You didn't partake and you weren't asked for your opinion?

The Witness: No.

Trial Examiner: All right.

Were you aware that these increases were being given?

[174] The Witness: I was aware of them after it had been decided upon.

Trial Examiner: Do you sign the checks?

The Witness: It goes through a checkwriter. I

control it and when I saw them going through the payroll department, that's when I was aware of it, the date of the distribution of the checks.

Trial Examiner: Is that the first you were aware of it?

The Witness: As to the details involved, the specific items?

Trial Examiner: Yes.

The Witness: I knew that we constantly had reviews. A review is an established pattern. I would take part in the office review other than the drafting room. The other reviews I had nothing to do with that. It was handed into the payroll department, and the first I would see of it would be the day that the checks were distributed, which in this case might have been about the 9th or 10th of April.

Q. (By Mr. Weissman) Mr. Finkel, can you tell us who in your employ is responsible for these reviews?

Mr. Raphael: Which reviews?

Mr. Weissman: For the wage reviews.

Mr. Raphael: What type, and when and where? I don't want any rambling questions.

Mr. Weissman: Why don't you object on the record?

[175] Mr. Raphael: I object to the form of your question. It is incomprehensible to me.

Trial Examiner: I assume he is talking about the wages for the employees in the unit.

Mr. Weissman: That is correct.

Mr. Raphael: What period?

Trial Examiner: I assume the reviews we have been talking about.

Q. (By Mr. Weissman). Specifically, in April of 1956 who was responsible for making these reviews of the employees and deciding what increases, if any, to give?

Mr. Raphael: April of 1956 is your question?

Mr. Weissman: April of 1957. Thank you.

A. This followed a fixed pattern that had been established and had been going on for at least ten years that I am aware of, maybe eleven or twelve years, and this would be that every few months the chief draftsman would discuss the various men in the various units with the squad heads or the men who were responsible for the breakdown in the unit.

He would then review it with the men and they would talk it over as to what the progress of a man is doing, if he is taking on more responsibility, as to the quality and quantity of his work. Then the chief draftsman will evaluate that himself.

He would bring the data in to Mr. Schwartzberg, the [176] general manager, and they would review it again as to the type of work that each individual man was doing.

Then Mr. Schwartzberg would take all that information and go in to Mr. Katz and go over it again. That's why you can see that the wages, adjustments and reviews and monetary remuneration were so various, because each case was reviewed on the merits.

Q. Who is your chief draftsman that you were talking about? A. At the time of this review?

Q. April of 1957. A. Earnest Halpern.

Q. And he initially made the review; is that correct? A. In conjunction with his department—

Q. Department head? A. I don't know if they were department heads. Squad bosses, I would say.

Q. He would discuss it with them? A. That's right.

Q. Then there would be a further discussion with Mr. Schwartzberg? A. Mr. Halpern to Mr. Schwartzberg.

Q. What is Mr. Schwartzberg's title? A. He is the general manager.

Mr. Weissman: Mr. Raphael, I had subpoenaed a document which was entitled "Notice to Engineering and Office Personnel, [177] Pay time for Absence Due to Illness," dated March 11th, 1957. May I have that?

Mr. Raphael: Do you have a copy of this?

Mr. Weissman, here you are. It appears to be a copy of what we have.

Mr. Weissman: I would like to mark this for identification as General Counsel's 31.

Trial Examiner: Mark it for identification.

(The document above referred to was marked as General Counsel's Exhibit No. 31 for identification.)

Mr. Weissman: It is on the stationery of the Williamsburg Steel Products Company, dated March 11th, 1957, and is entitled "Notice to Engineering and Office Personnel, Pay Time for Absence Due to Illness," and it bears the name of Alfred Finkel on the bottom of the document.

Q. (By Mr. Weissman) I show you General Counsel's 31 for identification and ask you whether you can identify that document. A. Yes, I can, sir.

Q. Will you tell us what this document is, please? A. It is a notice given—a copy of a notice posted throughout the office concerning the sick leave policy of the company with regard to the entire office, which would include the engineering and other office personnel.

[178] Q. Was it posted on March 11th, 1957, if you know? A. I don't know whether it was on the 11th or 12th or 13th.

Q. But it was approximately that date? A. Yes.

Mr. Weissman: I offer it in evidence.

Mr. Raphael: No objection.

Trial Examiner: It will be received.

(The document previously marked for identification as General Counsel's Exhibit No. 31 was received in evidence.)

Q. (By Mr. Weissman) Can you tell us what was the company's policy with respect to absence for—with respect to pay time for absence due to illness just prior to the posting of that notice? A. May I get my notices on it, because the sick leave policy had been changed throughout the years and we had a great deal of changes in the sick leave policy all in an attempt to help the use of sick leave.

Q. Do you know it from your own memory at this point? A. If I can refer to my notices. I took along all the notices going back to 1948 with regard to sick leave and the changes thereafter, and if I can read the notices up to that I will be able to answer the question.

Q. I am not particularly interested in 1948. I would like to know what was the policy immediately before the posting [179] of this notice. A. I would like to refer to my notice that I put up immediately before that. It might have been in 1955 or 1956, because we are always changing sick leave policy.

Q. Tell it to me from your recollection.

Mr. Raphael: I submit the witness has asked to look at his notices in order to properly answer the question.

Trial Examiner: Do you recall what the policy was prior to the posting of this notice?

The Witness: We had different policies with regard to accumulation and payments of excess or unused leave, so what it was before that, I don't know. Sometimes we had a cash payment policy and then accumulation policy. We were constantly changing.

In order to answer the question properly as to what it was before this particular change, I would have to look at my notices.

Q. (By Mr. Weissman) Get your notices. A. It will have to consist of two notices as to the policy before March 11th, 1957. One in March 28th, 1955. It refers to:

"All office employees shall receive payments for absence due to actual illness not exceeding ten days per year. Payments during absence from employment will be made only in cases involving the actual illness of the employee.

[180] "Employees with less than one year of continuous employment shall be paid not exceeding one day for each month of employment for absence due to actual illness, not exceeding a total of ten days per year.

"Unused time for illness shall be accumulated annually for the benefit of the employees to the extent one one-half of such unused time to be carried over for subsequent years, and payment will be made for the balance or other half directly to the employee the first month of the following year.

"Example: Employee loses four days due to illness, he will carry forward three days towards the accumulation and be paid for three days, making a total of ten days for the year. The maximum that

may be accumulated for such sickness shall not exceed twenty days.

"This additional benefit of payment for unused sick leave is granted to all employees as an incentive for improved attendance, and the complete cooperation of all personnel is urgently requested."

Q. I know you are reading from those notes, or whatever you have there— A. These are actual notices.

Q. I prefer you read it to yourself and then tell us about it. A. You heard that one.

[181] Q. Yes. A. The next revision was made May 17th, 1956, and this was a notice also to the engineering and office personnel with regard to the paid time for absence due to illness. In this notice we have pointed out—

Trial Examiner: Is it possible, as long as this exhibit was introduced in evidence, to get copies of those, too?

Q. (By Mr. Weissman) With respect to the two documents that you are reading from at this time, does that incorporate the type of sick leave plan that was being used by the company immediately prior to the posting of the March 11th notice? A. That's right.

Mr. Weissman: Then I would have no objection to the introduction of those two documents in evidence.

Trial Examiner: They will be General Counsel's 32 and 33.

Mr. Weissman: 32 would be a document dated March 28th, 1955, entitled, "Notice to Clerical Personnel, Paid Time for Absence due to Illness," on the stationery of Williamsburg Steel Products Company and signed by Alfred Finkel.

No. 33 would be a document on the stationery of the Williamsburg Steel Products Company, dated May 17th, 1956, entitled, "Notice to Engineering and Office Personnel, Paid Time for Absence Due to Illness," and signed by Alfred Finkel.

[182] Mr. Raphael, would you agree that these are in fact true copies of the originals?

Mr. Raphael: Ask the witness.

Q. (By Mr. Weissman) Are these true copies of the originals? A. They are.

May I point one thing out to you, sir: That while it only says "Notice to Clerical Personnel," there was a misunderstanding. This is actually to the engineering and office personnel. We didn't have a separate sick leave policy for clerical personnel. We had a policy for all office personnel.

Q. What you are saying is that on March 28th, 1955 that the notice to clerical personnel should have also included engineering personnel? A. In effect, yes.

Mr. Raphael: No objection.

Trial Examiner: They may be received.

(The documents above referred to were marked as General Counsel's Exhibits Nos. 32 and 33 and were received in evidence.)

Trial Examiner: We will take a recess at this time.

(Recess taken.)

Trial Examiner: The proceeding will be in order.

Mr. Weissman: I would like at this time to offer into evidence General Counsel's Exhibits 30-A, B and C for [183] identification.

Mr. Raphael: No objection.

Trial Examiner: It will be received.

(The documents previously marked for identification as General Counsel's Exhibits Nos. 30-A, B and C, were received in evidence.)

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[184] HERBERT JACOBSON a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Weissman) Please state your name to the reporter. A. Herbert Jacobson.

Q. What is your address? A. 150-10 71st Avenue, Flushing, New York.

Q. How long have you been employed by Williamsburg Steel Products Company? A. I believe it is about eight to nine years.

Q. What is your present position with this company? A. I am in charge of production control.

Q. Production control? A. Yes.

Q. In July of 1957, what position did you have with this company? A. My title was coordinator.

Q. Was there any other title that you had at that time? A. No.

Q. To the best of your recollection? A. Yes.

Q. Do you recall attending a meeting of employees approximately in the latter part of July, 1957? [185] A. Yes.

Q. Could you tell me to the best of your recollection

how this meeting was called? A. It was called by some of the men.

Q. Tell me in detail what you saw or heard or how you were involved yourself in this matter. A. By word of mouth people knew about it.

Q. It was by word of mouth.

Did you also pass around the word that there was going to be a meeting at that time? A. Very likely, yes, but I don't recollect.

Q. Can you tell us to the best of your recollection how many employees attended this meeting? A. Almost all, I would say; that is, in the part that we are referring to.

Q. When you say "almost all," can you give us a number, approximately? A. I think at that time we had about fifty men, or something like that. It might be about forty.

Q. These were the technical employees? A. Yes.

Q. Can you tell us exactly where the meeting was held? A. It was held in the drafting room.

Q. Can you tell us whether the plant that you work in is all on one floor? [186] A. It is on one very long floor.

Q. Where is the drafting room located? A. At the tail end, all the way at the end.

Q. At the end of the floor? A. Yes, which is a block long.

Q. Can you tell us approximately what time the meeting started? A. There is a coffee break around four o'clock. It started at that time.

Q. Can you tell us how long it lasted? A. Perhaps an hour.

Q. Can you tell us your normal working time at that time for the company? A. That is, the day you are talking about?

Q. Yes. A. Usually, around eight o'clock to 4:30.

Q. Did you normally work overtime? A. Yes, we did.

Q. What time did that normally end? A. Usually, 5:30, I believe—not every man stayed, but some did and some didn't.

Q. Do you recall whether you were paid by the company for the time that you spent at this meeting? A. I don't recall.

Q. Can you tell us in detail, starting at the beginning, [187] exactly what occurred at this meeting? A. Well, basically, it was proposed that we do away with Local 66 as the bargining agent.

Q. Tell us exactly what happened.

Mr. Raphael: Before we get down to this, I would like to have a *voir dire* question to this witness to determine the relevancy and competency of this question. I am in no position now to know whether this meeting was held in the absence of any responsible officials of the company to know whether it is or isn't hearsay.

Trial Examiner: I think he may proceed. The objection is overruled.

Go ahead.

Read the question, please.

(Question read.)

A. To do away with Local 66 and also, since we felt that a bad job was being done for us by the representative we

had certified, that we felt we could do a better job ourselves than he had done for us, or the union had done.

Q. Do you recall reading a contract to the employees? A. This was not a contract; this was a set of proposals that we had intentions of presenting to management when the time came.

Q. Did you read it? A. Yes.

[188] Q. Can you tell us how it came about that you read these provisions? A. It is just a question of me being the one that had a good loud voice.

Q. Was there any discussion with respect to these provisions? A. There was some on the floor.

Q. Was there also any discussion about a decertification procedure? A. Yes; definitely.

Q. Tell us about it. A. As I remember, the machinery of the—we had inquired from the National Labor Relations Board how we would go about getting Local 66 decertified as our bargaining agent. We explained that to the men, myself and Appel. This machinery, as I recall it, was that we had to resign from Local 66 and also apply to the National Labor Relations Board by a petition of some sort—I don't remember the form exactly—stating that we wanted to decertify Local 66 and we had organized at this time an organization of our own.

Q. Was there an election at this particular meeting? A. An election?

Q. Yes; a vote. A. Election of what?

Q. Any kind. A. There was a vote whether we should do this or not, and [189] the answer was "yes" by a majority rule.

Q. Did the employees present sign any kind of a paper at that time? A. Yes: the resignation from Local 66, and

also the decertification petition. We all signed that, as I recall.

Q. Do you recall whether any department heads were present at this meeting? A. Depending on what you mean by "department heads." Would you define that?

Q. Do you know what I mean?

Mr. Raphael: I will object to the form of the question.

Trial Examiner: Do you have any positions there known as department heads in the organization?

The Witness: We have a chief lister and chief detailer. However the head of the department is the chief of the engineering department.

Q. (By Mr. Weissman) Was the chief detailer there at the time? A. Yes.

Q. What is his name? A. Wisniewski.

Q. Was the chief lister there at that time? A. Yes.

Q. What is his name? A. Manzuk.

[190] Q. Was the chief of the apartment house section there at the time? A. I don't recall.

Q. Was the chief of the elevator department there at the time? A. Wait a minute. I am mistaken about the chief lister. He was not there. He was on vacation. The chief detailer was there. The elevator department, I don't remember one way or another.

Q. In late July of 1957, Mr. Jacobson, did you have responsibility with respect to establishing priorities of work? A. What do you mean?

Q. Do you know what I mean?

Mr. Raphael: Mr. Trial Examiner, I will object to the form of the question. This witness may be asked what were his duties at that time. It is for

the Trial Examiner then to determine what is the rational of those duties. This gentleman is this man's witness, and he certainly cannot lead him.

Trial Examiner: Will you read the question?

(Question read.)

Trial Examiner: Do you understand the question?

The Witness: No, I don't.

Q. (By Mr. Weissman) Mr. Jacobson, I ask you again, what [191] was your title at the time? A. Coordinator.

Q. Do you have any recollection of ever telling anyone that you were also a staff assistant to Mr. Halpern? A. That's true; that was part of my job.

Q. You were also staff assistant? A. That's what the coordinator did.

Q. You were coordinator and staff assistant to Mr. Halpern? A. It is a question of title. The title was coordinator if you ask me specifically what I did, I will tell you.

Q. At the time that you were employed in this capacity, which was late July of 1957—

Mr. Raphael: You say late July, 1957?

Mr. Weissman: That is correct.

Mr. Raphael: Is it late July?

The Witness: It is around that time. I don't know if it is late July or early July. It is July.

Mr. Raphael: Because thus far I have heard the testimony in the case to the effect that in July, 1957 there was a meeting. Now I understand from the question of Mr. Weissman he now places it as being late in July.

Mr. Weissman: My recollection of the testimony is that it was late July.

Mr. Raphael: I don't recall it. I wrote down what you said.

[192] The Witness: I believe it was July, too.

Q. (By Mr. Weissman) Mr. Jacobson, as part of your duties at the time that you were there around July of 1957, did you have anything to do with giving out work to the departments? A. Not at that time.

Q. Would you tell us what your duties were at that time? A. First of all, all orders that emanated from the sales department went through my hands and were entered into our system of handling records by me and assigned to the various departments, but not with priorities.

Also, all mail that came into the office came through my hands, and what was considered by me not worthy of the attention of the chief engineer, Mr. Halpern, I handled myself; and those things that I felt he should be in on—in other words, that warranted his attention—were shown to him and action was taken on them also.

Also, at that time I handled all questions from the shops, which was a good part of my duties.

Trial Examiner: What sort of questions?

The Witness: Technical questions having to do with the material being fabricated in the plant.

Trial Examiner: As to how it should be fabricated?

The Witness: As to how it should be done. Sometimes a loophole is left. In other words, something on a shop sheet will contradict something else, and

they would question [193] me as to which way they should proceed.

Basically, that is the job.

Q. (By Mr. Weissman) Did this job give you access to a good deal of confidential information? A. Only to the fact that I was in the chief engineer's office, and a person has ears.

Q. Mr. Halpern? A. Yes. We shared the same office.

Q. Was there anyone else sharing that office? A. The secretary.

Q. To whom? A. To Mr. Halpern and to the engineering department.

Q. Did you also use the services of the secretary? A. Yes.

Q. In the event that a particular chief of the detailing department or the other departments was not doing his job properly, did you have an opportunity of calling him in and talking to him? A. It depends on what you mean by not doing it properly. If it is a question of reprimand or something like that, that would be the function of the chief engineer, because he was in charge.

Q. What did you do? A. There were many times that questions came up where I would answer those questions, but as a matter of routine, [194] generally speaking.

Q. Do you recall ever making a statement that if department heads were not doing their work properly, you could call them in and criticize them for their shortcomings?

Mr. Raphael: I will object to this question.

It is apparent that the counsel is reading from some prepared statement of this witness. There

has been no evidence indicating refreshing of this witness's memory, and I object to the question. You cannot ask a man whether he made a prior statement with the purpose of impeaching him unless the preliminary groundwork has been laid.

Trial Examiner: I think the witness testified as to what he considered his duties to be. Apparently, he did not list what counsel is driving at and I assume he is refreshing his recollection to find out if he made certain statements.

The objection is overruled.

Q. (By Mr. Weissman) Do you recall ever making that statement? A. I don't recall.

Q. Do you recall signing a statement on September 23rd, 1957 for an Examiner of the National Labor Relations Board named Sidney H. Levy?

Mr. Raphael: Let the record show that he is seated here in the hearing room.

A. I signed the notes that Mr. Levy took.

[195] Q. Is this your signature? A. Yes.

Q. Would you read this statement, please?

Mr. Raphael: Mr. Examiner, I will object. This is quite incompetent.

Trial Examiner: Are you pointing to some particular place?

Mr. Weissman: Yes.

Mr. Raphael: You cannot ask a man to read a piece of literature which is not in evidence or anyplace else. We have some rules of evidence, I assume.

Trial Examiner: The objection is overruled. He may answer.

Q. (By Mr. Weissman) Did you swear, at the time that you signed this statement, that it was true to the best of your knowledge and belief?

Mr. Raphael: I will object to that, Mr. Examiner.

Trial Examiner: Overruled.

A. I see my signature on there. I take it that these are the papers.

Q. Then you did sign it? A. Yes.

Q. And you swore at that time that it was true to the best of your knowledge and belief? A. Yes. But that is not verbatim what I said at the time. [196] That is notes that were taken.

Mr. Raphael: You said more than what is in there?

The Witness: I imagine so.

Q. (By Mr. Weissman) I show you the first page, and I ask you whether your signature is on the first page. A. Yes.

Q. I show you the second page. Is that your signature? A. Yes.

Q. I show you the third page and ask you whether your signature is on the third page. A. Yes.

Q. I show you the fourth page. Is that your signature? A. Yes.

Q. I show you the fifth page and ask you whether your signature is on the fifth page. A. Yes, sir.

Q. Did you read this affidavit before you signed it? A. I believe so.

Mr. Newmark: May we have it marked, please?

Mr. Weissman: Yes. That would be General Counsel's Exhibit 34.

Trial Examiner: That's right.

(The document above referred to was marked as General Counsel's Exhibit No. 34 for identification.)

[197] Mr. Raphael: May I see it, please?

Mr. Weissman: Surely (handing document to Mr. Raphael).

May I suggest that Mr. Raphael keep his voice down.

Mr. Raphael: I suggest that you don't listen to what I am saying. If you want to eavesdrop, I think you are ungentlemanly. Stand a little further and you won't hear my whispering.

Mr. Weissman: I still suggest you talk in a whisper.

Mr. Raphael: All right, sir.

Q. (By Mr. Weissman) Now, Mr. Jacobson, I ask you to read this portion starting with the word "even" and down to the word "shortcomings." A. I don't feel that is a fair statement. I may have signed this, but I don't feel it is a fair statement at this point.

Q. Mr. Jacobson, I ask you again, as part of your duties in July of 1957, if department heads, as you describe them, were not doing their work properly, would you bring them in to your department and criticize them as to their shortcomings?

Mr. Raphael: Mr. Examiner, I will object to this question on the grounds that counsel does not have the right to impeach his own witness.

Mr. Weissman: I am attempting to refresh his recollection.

Mr. Raphael: Mr. Examiner, there has been no

need shown. [198] He is using an exhibit not in evidence for the purpose of discrediting a witness and impeaching him.

Mr. Weissman's statement to you, Mr. Trial Examiner, that his purpose is to refresh this witness's recollection, is not a correct lawyer-like statement, because in his heart and soul he knows that his only purpose is to discredit and impeach this man. And he knows he has no right to do that.

I object to the question.

Mr. Weissman: You are looking into my heart and soul and I am telling you that I am attempting to refresh this man's recollection.

Trial Examiner: Objection overruled.

Proceed.

Mr. Weissman: Would you please read the question back to Mr. Jacobson?

(Question read.)

A. The way that is stated, you make it a formalized thing. Actually, the relationship is not that. It is, "Hey, Joe," or "Hi, Pete," or "Hi, Eddie; what happened on that one or this one?" It is not a question to criticize as such or discipline; it is a question of getting something done. That is what is meant by being a coordinator. And I feel that the statement, even though I have signed it, is not a fai statement of what existed at that time or since. [199] Q. When Mr. Halpern was not in the office or was away, did your duties change in any way? A. At a time like that, everything I had absorbed with him I would do myself.

Q. Like what? A. Like questions of materials that

would be furnished to a job where there was an error or mistake and there was a question of money involved, where a customer wanted to charge the company for repairs, for instance, or methods of altering materials to suit job conditions to overcome an error we had made, instead of consulting with him, I would take care of it to the best of my ability.

Q. Again, do you recall when Mr. Halpern was away whether you took on more authority at that time?

Mr. Raphael: I will object to the form of the question. We have no basis of comparison.

Trial Examiner: He is asking him whether he took on any more.

Answer that yes or no.

The Witness: I don't think I can answer that yes or no.

What would you mean by "authority"?

Q. (By Mr. Weissman) Mr. Jacobson, Mr. Halpern was chief engineer; is that correct? A. That is correct.

Q. In that capacity, he was in overall charge of the [200] engineering department; is that correct? A. Yes, sir.

Q. When Mr. Halpern was away, did you take over his duties? A. As many of them as I could within the scope of my job.

Q. Will you tell us what duties you took over when Mr. Halpern was away? A. I already answered that. I mentioned the example.

Q. What other duties did you take over? A. Well, if there were any difficulties, I would settle them if I could without going further. I mean, say—I can't think of any

specific example of what I would do other than what I ordinarily would do. I certainly wouldn't take over his so-called executive functions.

Q. Now, Mr. Jacobson, do you recall interviewing applicant's for employment? A. Yes. We used to have tests. If the department head wasn't available, I used to give a man a test and a run-down and then we would say whether we thought he was good or not and then go in to Mr. Halpern and talk further. We would just weed them out.

Q. Did you tell Mr. Halpern your recommendation at that time? A. Yes; either I or the head of the listing department. Usually, the head lister did that.

Q. Did he normally follow your recommendation? [201]
A. Not necessarily.

Q. When you say "not necessarily," can you tell us approximately how many times he followed it and how many times he didn't follow it? A. That is impossible to answer.

Q. Did he usually follow your recommendation?

Mr. Raphael: Objected to as already answered. The witness has said in answer to that question that sometimes he did and sometimes he didn't.

A. My answer to that is, Mr. Halpern is a very independent soul.

Q. What do you tell Mr. Halpern after you interview these applicants? A. "He can add and subtract, and he looks reasonably intelligent." Along those lines.

Q. Did you ever tell Mr. Halpern that he shouldn't hire a particular individual? A. I would say that I didn't think he was competent.

Q. When you recommended that he did not hire an in-

dividual, did Mr. Halpern hire him anyway? A. I don't recall whether there were any instances of that.

Q. Did he usually follow your recommendation? A. You asked me that.

Mr. Raphael: It has been asked and answered whether his recommendations of all kinds were followed, and obviously [202] counsel is not satisfied with the witness's answers, but the answers have been given.

Mr. Weissman: I am specifically requesting an answer to a question which has to do with recommendations that an applicant not be hired.

Mr. Raphael: I submit, Mr. Examiner, that question has been answered three times, according to my records.

Trial Examiner: Maybe it had to do with applicants that were ultimately hired. Now he is asking about applicants that were not to be hired.

The Witness: I will go into a little detail: We always had people coming up looking for jobs. We didn't hire all of them. Whether we didn't hire them on my recommendation or on others is an open question, and I don't remember specifically about people we don't hire. Who cares?

Q. (By Mr. Weissman) Do you tell them to go? A. Not necessarily. If there is even a germ of a possibility that he is a good man, Mr. Halpern will interview him himself.

Q. If there is no germ, he goes? A. If it is obvious.

Q. Then you say, "Goodbye"? A. That's right.

Q. Those with any possibility, you hand them over to Mr. Halpern? [203] A. Yes.

Q. Then you tell Halpern that your opinion is such-and-such? A. That's right.

Q. What is your present title again? A. Head of the production control department.

Q. What does that encompass? A. It encompasses assigning all jobs in the listing department, for one thing; setting up the precedents of work in the shop; making all promises as far as dates of delivery to customers, and so on, and various other matters.

Q. Be specific. A. I do an awful lot of things in one day.

Q. Tell us about it. A. I still read all mail coming into engineering—

Mr. Raphael: I object to this. It is immaterial.

Trial Examiner: Let me ask a basic question:

I assume this is all going to trying to establish that he is a supervisor within the meaning of the Act?

Mr. Weissman: Yes.

Mr. Raphael: As of what time?

Mr. Weissman: I am asking as of now.

Trial Examiner: As of today?

Mr. Weissman: That's right.

Trial Examiner: Is there any question?

[204] Mr. Raphael: Yes.

My position is that it is obvious that Mr. Weissman is not happy with these answers. In July, 1957, there was a meeting. I knew nothing about it and I am learning about it here for the first time. Apparently they had people down here and they took statements.

This gentleman says that the man who took his statement didn't take it down accurately. He is

doubting some of the things in there; a lot of things are not in there.

He testifies that when that meeting was held in July, 1957, he was not in an executive position; he was a coordinator. That is a high-class title for a guy that is a chief clerk or something. If at that time he wasn't an executive and he had no authority in the company, he had a right to be at that meeting. What happened after that is history.

Trial Examiner: That is true, but General Counsel now, I assume, is trying to establish that he was a supervisor within the meaning of the Act going back to that time.

Mr. Weissman: I have two reasons: One is the reason you just stated, and the other is to determine at this time whether this individual is a supervisor and to determine what his interests are at this time so that I can determine what course to take from here on in.

Trial Examiner: The objection is overruled.

[205] Proceed.

The Witness: What was the question again?

Mr. Weissman: Please read the question back to the witness.

(Record read.)

Q. (By Mr. Weissman) What were the other duties? A. When I say "assigning work"—rather, giving dates to customers, it encompasses a lot more than that, in that the manner of setting it up in the shop is my responsibility now, at this point. I would have to go into a long dissertation on how our system works in order for you to understand it.

Q. Did you say something about assigning work? A. Yes. In other words, let's put it this way: An order comes into the engineering department. Our standard practice is that it comes through the chief detailer on certain jobs and through me on other jobs, and then I make promises to customers of drawings and material, and so on and so forth, based on what our shop capacity is over a period of time and projected into the future and so on. Then, when the work is assigned to the shop, we put it into certain groups in order that it will come—

Q. Who do you mean by "we"? A. The control system that I am in charge of.

Q. When you give the work to a particular department, do [206] you carry on beyond that and follow it through? A. What do you mean by "follow it through"? To see that it is done?

Q. That is correct. A. Only in that the system, the way it is set up, forces me to do that. In other words, I am checking all the time to see that the things are done because I need the work in order to put it into the shop, which I have promised. But as far as being a whip there, that is not so, if that is what you are driving at.

Q. When you go into a particular department, what do you do there exactly? Tell us exactly what you do. A. Say I had given a job to a man, assigned it to him to put on paper, and each job has an estimated value on it, how long it is supposedly going to take. Now, it is assigned figuring that estimated time in order to go into the shop at a certain time. If that is not complied with, I would not be able to keep the promise I had made, and therefore I would ask, "Did you finish this?"

Q. You would go to the specific employee and talk to the specific employee? A. Not all the time, because most of the times it runs as the system should.

Q. When you are concerned about a particular problem, then you follow it up? [207] A. Yes.

Q. Where is your desk now located, Mr. Jacobson? A. In a separate office, down in the hall.

Q. You have a separate office for yourself? A. Not for me.

Q. Who else is in it? A. Everyone in the control system.

Q. How many people work in the control system? A. Secretary, I have one expediter, one clerk—I should say two clerks; then I have someone part-time.

Q. How many employees are under your supervision? A. At the present time?

Q. Yes. A. Four.

Q. Did you hire them? A. No. They had worked for the company—I take that back. I hired the secretary—I shouldn't say that. I interviewed her, I thought she was very nice, and I went to the proper party.

Q. What did you tell the proper party? A. That I thought this girl was very good for what we needed her for.

Q. They followed your recommendation? A. Yes.

Mr. Weissman: Mr. Examiner, at this time, under 43(b) [208] I wish to interrogate this witness as a hostile witness. I think that his demeanor and everything he has stated with respect to his position in the company indicates his hostility and I would like to have the right to cross examine him.

Mr. Raphael: I will object to that most strenuously and I also object to the characterization by counsel

about this witness's demeanor. Perhaps the situation might lie the other way. I think this witness has been cooperative and he has answered the questions to the best of his ability.

Trial Examiner: Proceed with the questioning and see what develops.

Q. (By Mr. Weissman) Mr. Jacobson, did you attempt to vote in the National Labor Relations Board election in June of 1956?

Mr. Raphael: I will object to that as incompetent.

Trial Examiner: What is the relevancy of that?

Mr. Weissman: I will connect up the relevancy.

Trial Examiner: I will take it subject to a motion to strike.

A. Yes, I voted.

Q. Did you attempt to vote? A. I voted and I was challenged.

Q. Do you recall why you were challenged? A. I was challenged by the company.

[209] Q. How do you know you were challenged by the company? A. I was told.

Q. Who told you? A. I don't recall who exactly. Someone in authority—no; I think the man that was there from the National Labor Relations Board. He said it was challenged and they put it in a separate envelope.

Q. Did you discuss this matter with anyone from management after that date? A. Not that I can remember; but it was challenged.

Q. Approximately July of 1957, did Mr. Halpern tell you what his opinion was with respect to your position in the company? A. (No response.)

Q. Do you understand my question? A. I think so.

Q. Please tell me. A. His position was that I was management, but I asked him where the money was.

Q. When you say that he said you were management, would you please tell me what else he said at that time? A. Specifically?

Q. Specifically. A. I wish you would make that clear.

Q. He asked you if you were management, and I asked you [210] what you said. A. I don't know about a date.

Q. Tell me when this was said. A. First of all, let me say that anything in this category that Mr. Halpern may have said to me was on a personal level between he and I as people, and not management and someone who works in the office—

Q. He was telling you this—

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[211] Q. (By Mr. Weissman) Would you complete your answer? A. He felt that he couldn't see why I personally was in the union, which I was at that time because I had made up with the boys in the listing department that if they went as a majority with the union, no matter how I felt I would go along also, because I thought it was the fair thing to do at the time, which I did, and he couldn't see this position.

He also said to me on a personal level that he couldn't see why I felt that way, and I felt that ethically I had to tell him that this was the case because after all he was management. I stated to him very baldly that I had gone along with the rest of them and I thought he should take that into consideration at all times, because I didn't want him to say something inadvertently to me about management's position, or something like that, which he might

think would go back to the union, which I never did because I felt I was pretty much in the middle sitting on the fence. A. Because sometimes I could hear things which Mr. Raimist might possibly be interested in, and vice versa. Sometimes the men would tell me other things, and I am not the type that goes back and forth, giving information both ways, and [212] I wanted him to relieve me if that is the way he felt about it, but he didn't.

Q. At that time he said that he thought you were a part of management? A. He didn't say that. He felt I should go along with management. I think I said the other before. Because his view of me was that I was someone that was going to go someplace in the company, that I had a future in the company. The chance was there.

Q. What did he say to you with respect to going along with management? A. First of all, he was against me being in the union.

Q. How do you know that? A. He said so.

Q. What did he tell you? A. He just—

Mr. Raphael: Mr. Examiner, I will object to this line of inquiry. I'm sorry that it got as far as it did. I don't think there is the slightest basis or any assumption or inference that was made by counsel here before that this man is a hostile witness. I think he has clearly and honestly stated his position.

Trial Examiner: You may proceed. The objection is overruled.

Q. (By Mr. Weissman) What did he tell you? [213] A. I just said what he told me. He felt that I shouldn't go along with it because I would jeopardize my future.

Q. He thought you shouldn't belong to the union? A. Yes.

Q. He told you that? A. Yes, personally.

Q. On a friendly basis? A. Yes. After all, we worked together for many years.

Q. How long have you worked together? A. He worked there as long as I did.

Q. How long did you work in the same physical surroundings with him? A. A couple of years.

Q. When did this stop? A. At the point when I became in charge of production.

Q. When was that? A. The beginning of last year, January or February of last year, 1958. Mr. Halpern became the plant superintendent and I took over the production at that time.

Q. Who was doing Mr. Halpern's work as chief engineer? A. Now?

Q. Yes. A. There was another man named Rosner.

Q. Did Mr. Halpern ever come to you and ask you for your opinion with respect to giving increases to individuals, [214] employees in the unit? A. Occasionally he would ask me, "Do you think he is doing a good job?" which every checker did.

Q. Just for yourself. A. He would ask me whether the man was good.

Q. What did you tell him? A. "Yes."

Q. Do you know whether he followed your recommendation? A. No.

Mr. Weissman: Mr. Examiner, at this time I wish to offer this affidavit in evidence as an admission, prior admission of this individual, who I believe to be a supervisor at this time.

Mr. Raphael: He is talking about supervisor at this time. We are not interested in that. We are

interested in what was this man's function at the time that the meeting in July of 1957 took place.

He might have become the president of the company since then. The question is, what was this man's function at that meeting? Was he or was he not in an executive capacity? Did he have a right to participate in the meeting? Was he at that time, not today, voicing management sentiments?

If you want to mix apples and grapefruits, all right, but you can't do it.

Mr. Weissman: It is General Counsel's contention that [215] Mr. Jacobson was a supervisor in July of 1957 and is a supervisor today.

It is also General Counsel's contention that this affidavit is in the nature of an admission which was made on September 23rd, 1957, which was close to the time when the events occurred. I therefore offer it as an admission.

Trial Examiner: I will reserve ruling on this. I will read it over later on, unless you want to use it right now.

Mr. Weissman: I have no further questions.

Mr. Raphael: My objection is noted.

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[239] **Stenographic Transcript of Testimony at Hearing of January 30, 1960.**

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[240] **PROCEEDINGS**

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[243] TIMOTHY J. SNEED, JR. a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please give your full name for the record.

The Witness: Timothy J. Sneed, Jr.

Trial Examiner: What is your address?

The Witness: 1750 East 32nd Street, Brooklyn, New York.

DIRECT EXAMINATION:

Q. (By Mr. Weissman) Mr. Sneed, what is your title? A. Senior draftsman.

[244] Q. What department do you work in? A. In the drafting room.

Q. How long have you worked for the company, for Williamsburg? A. Since 1954, February.

Q. Mr. Sneed, do you recall some time in July of 1957 attending a meeting of employees on the company premises? A. Yes.

Q. Could you tell us how you were notified of the meeting? A. It was passed around by mouth; word of mouth.

Q. It was passed around by word of mouth? A. Yes.

Q. Do you recall any specific individual coming around and announcing it? A. It was in our room. When Herbie

came into our room, he mentioned it. He was still calling to other fellows and there were other fellows still calling one another to come into the room.

Q. Who is Herbie? A. Jacobson.

Q. Herbie Jacobson? A. Yes.

Q. Can you tell us exactly where the meeting took place, physically? A. In the drafting room.

[245] Q. Can you tell us how many employees were present at the meeting? A. About forty.

Q. Can you tell us what time the meeting started? A. Four o'clock.

Q. Can you tell us what time it ended? A. I think it was around 5:30, six o'clock.

Q. What was your normal working day at that time? A. It was eight to 4:30, plus the overtime, which was until six.

Q. Tell us what occurred at the meeting. Start at the beginning and just tell us what occurred during the entire meeting. A. Herbie Jacobson began to read this list of proposals that he had and he read them off, and Sid Appel was commenting on them. They asked the fellows if they were for it or against it. They asked them to take a vote to decide whether they were in favor of it, in favor of decertifying, being that the situation was the way it was.

Q. Who asked the fellows? A. Particularly, I don't recall who, which one of them it was.

Q. You mean which one between Jacobson and Appel?

Mr. Raphael: I am going to object. There is a habit [246] Mr. Weissman has of paraphrasing witnesses' answers. The witness said he doesn't know who it was. Then he said, "You don't know whether

it was Jacobson?" I think it is wrong. I object to that form of inquiry.

Mr. Weissman: He said he didn't know which one it was.

Mr. Raphael: Of the forty people. You picked out one man.

Mr. Weissman: He had previously mentioned two names.

Q. (By Mr. Weissman) If you know, do you recall? A. I don't recall which one.

Q. Tell us how this vote was conducted. Give us the details. A. They had decided that it would be just yes or no, so that there wouldn't be any doubt whether fellows were for or against it. They just passed out a ballot and you wrote "yes" or "no", and then they collected them.

Q. Who collected them when you say "they"? A. There were about two or three fellows, I think. One fellow was going around, but there was somebody with him watching, to make sure that the ballots were placed in the box and that there was nothing out of hand, as far as the way it was conducted.

Q. Do you recall who was doing the passing out of the ballots and the collecting? A. It is not clear as to which one, who, or what. I [247] remember the incident, as far as what took place, but I don't recall who it was specifically.

Q. Do you recall who counted the ballots? A. I think Sid Appel counted them. There were about four of us watching.

Q. Could you name the four employees that were watching? A. I know I was one of them. We were surrounding the box to make sure nothing was illegal or that there was no horseplay.

Q. Do you remember the vote? A. Only that it was a majority in favor of decertifying.

Q. After you voted, what else happened? A. Then we signed the two papers, one decertifying, and the other one withdrawing from the union, I think it was.

Q. Do you recall whether you were paid for the time that you spent at this meeting? A. I believe I was.

Q. Do you recall attending a second meeting at a later date? A. Yes; there was a meeting later on about forming the association.

Q. Can you recall approximately when that took place? A. It was about a month after.

Q. Can you tell us where it took place? A. In the drafting room, after work.

[248] Q. After work? A. Yes, sir.

Q. Could you tell us how long it lasted? A. It wasn't too long. The meetings never lasted long. It was about a half-hour, three-quarters of an hour.

Q. Could you tell us what business was conducted at this meeting? A. I think it was writing the constitution and by-laws, establishing the beginning of the association.

Q. Do you recall how you were informed about the meeting? A. I think one of the fellows put a notice up about the meeting, and then they were passing it around by conversations during lunch, and so on, that there would be a meeting.

Q. During the time Local 66 was active in the plant, had you ever seen a Local 66 notice posted anywhere in the plant? A. There was something, a letter between Local 66 and the company, that was posted on the board. That was about all.

Q. Was the letter that was posted under the com-

pany's stationery or the union's stationery? A. It was the union's stationery.

Q. And it was posted on the board? A. Yes.

Q. Do you recall whether there was an election of officers at the second meeting? [249] A. I think it was at the second meeting, yes.

Q. Could you tell us who was elected at the second meeting? A. I know who they are. I don't recall their exact position. It was Sid Appel, Charlie O'Regan, Herbie Jacobson, and Murray Klein.

Q. Were there any further meetings after the second meeting? A. Yes, there was, but there was nothing in any sequence. They wouldn't hold one for months at a time, and then they would hold one, and then skip quite a few months.

Q. Could you give us an approximate figure of how many other meetings there were in addition to these two? A. About three or four, I guess.

Q. Were they all held in the same place? A. Yes. They were held in the drafting room. Sometimes they were held in the elevator department downstairs. They were all after hours, though.

Q. The drafting room is on the second floor? A. The drafting room is on the fourth floor.

Q. And the elevator department is on what floor? A. When they established it, it was on the fourth floor. It is on the third floor now.

Q. Was it on the third floor at that time? A. In 1957?

Q. Yes. [250] A. No.

Q. Where was it then? A. It was on the fourth floor, with the rest of our offices.

Q. Were all the meetings held after hours? A. Yes.

Q. With respect to the first meeting which occurred in July of 1957, do you recall that certain individuals cast challenged ballots? A. Yes, I believe so.

Q. Could you tell us how that came about? A. They felt that if they were taking a vote, it would have to be along the same lines the National Labor Relations Board had taken it in certifying to the unit, and that they didn't want any question of doubt about these votes in the event they would be used to count as far as adding to the decertification. So they held them on the side and didn't use them in determining the majority.

Q. Was there any discussion about why these people were challenged? A. At that time, no. I mean, as I say, they outlined that it had been done the same way it was done previously.

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[267] EDWARD WISNIEWSKI, a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please give your full name to the reporter.

The Witness: Edward Wisniewski.

Trial Examiner: Please state your address for the record.

The Witness: 5 Mozart Lane, Bethpage, Long Island.

DIRECT EXAMINATION:

Q. (By Mr. Weissman) Are you employed by Williamsburg Steel Products Company? A. Yes.

Q. Can you tell us how long you have been employed by this company? A. About twelve years.

Q. Can you tell us what your job title is? A. Draftsman.

[268] Q. Do you recall whether you were anything other than a draftsman? A. I am a senior draftsman, but I don't think I have a title other than draftsman.

Q. Have you ever referred to yourself to anyone else as anything other than a senior draftsman?

Mr. Raphael: I am going to object to the form of the question. It is a bi-focal question: yourself and by others. I would like to have that question split.

Trial Examiner: The objection is overruled. He may answer it.

The Witness: What was that question?

(Question read.)

A. Probably in speaking to customers I might have told them I was in charge of drafting, the detailing of drafting.

Q. That you were in charge of detailing? A. Yes.

Q. Would you tell us what that means exactly, in charge of detailing? A. I am in more or less an advisory position. I have been there, as I say, twelve years and I am familiar with the procedures used in our department and the procedures used in the shop, and when the draftsmen want to know how to design some particular opening or group of openings, they would consult me if they had any difficulties.

[269] Q. Mr. Wisniewski, do you recall attending a meeting of employees on company premises in approximately July of 1957? A. Yes.

E. Wisnicwski, for General Counsel, Direct.

Q. Could you tell us how you were called to this meeting, how it came to your attention? A. I believe it was by word of mouth.

Q. Could you tell us who told you? A. No; not offhand.

Q. Could you tell us exactly what occurred at the meeting? A. There was a decertification of Local 66. We signed a paper to that effect. We also signed a paper to form our own association.

Q. Can you tell us that in some detail as to what occurred? Start from the beginning and work your way to the end. A. I believe the meeting started with the reading of the proposals. Then a vote was taken—well, there were discussions pro and con, whether we should form our own association and decertify Local 66. Votes were taken and the papers were signed.

Q. Do you recall who read the proposals? A. I believe Jacobson read most of the proposals.

Q. Do you recall if anyone else commented on the proposals? A. There were a lot of comments by everyone.

Q. Could you tell us how long the meeting lasted? A. Maybe forty-five minutes or an hour.

[270] Q. Could you tell us exactly where that meeting took place? A. In the drafting room.

Q. Could you tell us how many employees were present? A. I can't recall, but from previous testimony I would say around forty.

Q. Tell us from your own recollection, please. A. I didn't count them. I would say there probably was about that many.

Q. Did you vote in the election? A. Yes.

Q. Was your vote counted? A. It was not counted to find out if the majority ruled or not. It was kept separate.

Q. Could you tell us why? A. Because the original National Labor Relations Board election was held in the same manner.

Q. Do you know why you were challenged in the original National Labor Relations Board election? A. No.

Q. Do you recall what the vote was at this meeting? A. It was in favor of decertifying 66.

Q. Do you remember the totals? A. No.

Q. Do you recall who handed out the ballots? [271] A. Not offhand.

Q. Do you recall who counted the ballots? A. No.

Q. Do you recall what time it took place? A. It was around 3:30 or four o'clock.

Q. Do you recall attending any other meetings at a later date? A. Yes.

Q. Could you tell me when they occurred? A. I believe the first one was in August, and approximately every month thereafter.

Q. Can you tell me where they occurred? A. In the drafting room.

Q. Can you tell me what time they occurred? A. After working hours.

Q. How long did they normally last? A. Anywhere between fifteen minutes and an hour, I would say.

Q. Could you tell me what business was conducted at these meetings? A. At all of the meetings?

Q. Let's say the first one after the July meeting. A. The first one after the July meeting I think we established the by-laws for the association and elected officers.

Q. Do you recall the names of the officers? [272] A.

Yes. Sidney Appel, Herbert Jacobson, Charles O'Regan, and Murray Klein.

Q. Do you recall what happened at the second meeting? A. Only in general. I supposed we discussed further probably the constitution and by-laws and what we would ask for, what propositions we would put before the company to better ourselves.

Q. How many such meetings would you say were held after the July meeting? A. Approximately one a month.

Q. For how long a period of time? A. Up into the present.

Q. Have they all been held on company property? A. Yes.

Q. Have they all been held after working hours? A. Yes.

Q. Mr. Wisniewski, going back to the question of your title, do you recall in error stating to anyone that you were the chief draftsman in charge of the detailing department? A. No specific instances, but as I say, I probably referred to myself as such.

Q. Do you recall being interviewed on company property on September 25, 1957, by Sidney H. Levy, Examiner? A. Yes.

[273] Q. Do you recall signing an affidavit on that date? A. Yes.

Q. I show you this document of three pages and ask you whether this is your signature at the bottom. A. Yes, it is.

Q. I refer you to a typewritten copy, which you can compare with the original, and ask you to read just starting with "I" over to "department."

Mr. Raphael: In the first place, anything that is offered here to a witness should be marked for identification. Let's do things in an orderly way, if we can.

Do you think I am right, Mr. Examiner?

Trial Examiner: I think it should be marked for identification.

Mr. Raphael: Then I want to say something about it.

Trial Examiner: It will be General Counsel's 35 for identification.

(The document above referred to was marked as General Counsel's Exhibit No. 35 for identification.)

Mr. Raphael: I am going to object to the witness being asked to look at specific portions of Exhibit 35 on the grounds that no proper foundation has been laid, that it is incompetent and immaterial.

Trial Examiner: Overruled.

[274] Q. (By Mr. Weisman) Have you finished reading the first part, Mr. Wisniewski? A. Yes.

Mr. Raphael: May I see it?

Mr. Weissman: I request you confine yourself to the first sentence.

Mr. Raphael: Once you show the witness a paper, I have a right to look at it.

Mr. Weissman: I referred the witness to the first sentence and that is all, in my opinion, you are entitled to see.

Trial Examiner: I think later on counsel will be entitled to see any instrument which this witness used to refresh his recollection or which he used in connection with his testimony. I don't think this

is the time right now at this point, and the General Counsel may proceed as he is.

Mr. Raphael: I would like to read the portion he has shown the witness so I can follow the testimony of the witness.

Trial Examiner: You will get an opportunity to see it, but this isn't the point now.

Q. (By Mr. Weissman) Please answer my question, Mr. Wisniewski. Have you ever told anyone that you are the chief draftsman in charge of the detailing department?

Mr. Raphael: I am going to object to this as incompetent. [275] General Counsel cannot impeach his own witness.

Trial Examiner: The objection is overruled. He may answer.

A. It says on the paper that I told Mr. Levy that.

Q. At the time that you told Mr. Levy that, did you swear that that was a fact?

Mr. Raphael: I object to the form of that question. There is constantly the harassment of a witness. I notice that Mr. Weissman keeps on saying that continuously: Did you swear.

It has been testified that the man made an affidavit. To continue to proceed with questions with that sort of an admonition is indicative of one thing, that he is asking this witness to answer the question the way Mr. Weissman wants the question answered. I don't think that is fair to the witness.

Trial Examiner: So far the witness only identified his signature. I think the question is proper. The objection is overruled.

Mr. Raphael: He asked the witness whether he swore to it.

Trial Examiner: That is the question pending.

Mr. Raphael: He—

Trial Examiner: There is no harm repeating it.

The Witness: May I hear the question?

[276] Trial Examiner: Did you swear at that time that the statement was true?

The Witness: The question put to me at that time, I believe, was, was this in general what we discussed, and I signed it.

Q. (By Mr. Weissman) Mr. Wisniewski, is this your name on the bottom of the first page? A. Yes.

Mr. Raphael: I object to a repetition of these questions. Again, this is a harassment of this witness. I don't think the witness should be badgered.

Trial Examiner: I don't think he was asked whether he signed the first page. He identified his signature on the last page.

Mr. Raphael: It is obvious what is being attempted. It happened with Mr. Jacobson. He was bargered. This man is being badgered now.

Trial Examiner: Your statement is out of order. The witness is not being badgered.

Q. (By Mr. Weissman) I ask you again, is this your signature at the bottom of the first page? A. Yes.

Q. Is this your signature at the bottom of the second page? A. Yes.

Q. And you have testified about the third page. Did you [277] read this document before you signed it? A. I read over it quickly, yes, sir.

Q. I repeat my question again: At the time that you signed this document, did you tell Mr. Levy that you were chief draftsman of the detailing department? A. Evidently, or words to that effect.

Q. In July of 1957, how many employees were under your supervision?

Mr. Raphael: I object to the question on the grounds it presupposes a state of facts. This witness has not testified that any employees were under his supervision. The appropriate question is, did he have any employees under his supervision?

Trial Examiner: I think we are splitting hairs.

Mr. Raphael: I don't think so, because we are at a very crucial point in this case, and this is a very important question.

Trial Examiner: If the witness says "none," he had none under his supervision.

Q. (By Mr. Weissman) How many employees were under your supervision in July of 1957? A. I don't recall.

Q. Do you recall ever making the statement that there were fourteen draftsmen under your supervision?

Mr. Raphael: I am going to object to that, if it [278] pleases the Examiner, on the grounds that again this witness is being impeached by counsel.

Trial Examiner: The objection is overruled.

The Witness: May I have that again?

Mr. Weissman: Would the reporter please read it back to the witness?

(Question read.)

A. I don't recall, but it may have been.

Q. I show you your affidavit and ask you to read this portion, starting with "I" and ending with "present."

(Short pause.)

Now would you answer the prior question?

The Witness: (To the reporter) Would you read the question?

(The question was read by the reporter as follows:

"Do you recall ever making the statement that there were fourteen draftsmen under your supervision?")

A. I recall it because I just read it.

* * *

[279] Q. (By Mr. Weissman) Do you now recall that in July of 1957 you had fourteen draftsmen under your supervision? A. No. I cannot testify to quantities, except from what I read on that paper.

Q. Can you tell us how many employees were under your supervision at that time? A. It could be around that figure. People come and go. The amount of people in the drafting room changes all the time. When I first came to Williamsburg, there were four draftsmen. Over the years it has been changing back and forth. I imagine it was somewheres in the neighborhood of between twelve and eighteen, somewheres in there.

Q. As chief draftsman in charge of the detailing department in July of 1957, what were your duties with respect to supervising these approximately fourteen draftsmen? A. My duties were approximately the same as they are now.

Q. Tell us what they are.

Trial Examiner: The same as what?

The Witness: I believe I told you that before.

Trial Examiner: I didn't get that. The same as what?

The Witness: The same as they are now.

I believe I told you that before.

[280] Q. (By Mr. Weissman) Tell us again. I don't recall whether you did or not. A. I am in more or less an advisory position. If draftsmen have questions about how we should fabricate something or how we should design it for fabrication, they come to me, because I had quite a lot of experience with the company.

Q. Could you tell us where you were located physically in July of 1957, your department? A. Where the drafting room was located?

Q. Yes; at that time. A. The address?

Q. No. I meant physically in the plant. A. It is on the fourth floor, at the end of a long corridor.

Q. In the room you were working, could you tell us were there any other employees other than the draftsmen under your supervision and yourself? A. No.

Q. Just this group? A. Just the draftsmen.

Q. Could you tell us what kind of work is performed in the detailing department? A. We interpret architects' plans as far as our materials are concerned and we put it on paper in form for submission [281] for the architects' approval.

Q. Do you give the work to the men to be performed by them? A. Sometimes.

Q. Do you decide which man should do which job? A. Sometimes.

Q. On what basis do you make this decision? A. On the basis of what kind of a job it is, how difficult it seems to me.

Q. Do you mean that you give a difficult job to a more experienced man, and a less difficult job to a less experienced man? A. Yes.

Q. In the event a particular employee under your supervision is not performing a particular job properly, what do you do about it? A. I generally don't complain about it to any of the employees I work with, unless I am asked.

Q. Do you go to the employee and talk to him? A. I talk to the employees all day long.

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[282] Q. (By Mr. Weissman) Mr. Wisniewski, can you tell us what your responsibility is with respect to the quantity of the work turned out by your department? A. It varies according to how much work is on the books.

Q. But you do have responsibility for the quantity of work? A. To a certain extent, yes.

Q. Would you explain what you mean by "a certain extent"? A. I try to keep track of what each man is working on. When he is ready for a new job I sometimes give it to him or ask the chief engineer, the chief draftsman in charge of the engineering department, what he wants to do with this [283] man after he gets done with what he is working on.

Q. Do you walk around in your department and look at the work that is being performed by the employees? A. Yes.

Q. How much of your time is spent in walking around and looking at the employees' work? A. Roughly, maybe twenty-five percent.

Q. Twenty-five percent of your time? A. Yes.

Q. Do you recommend the employment of applicants for jobs in your department? A. I am asked for my opinion at times.

Q. Do you interview these applicants? Just answer yes or no.

Mr. Raphael: I am going to object to the admonition.

Mr. Weissman: I withdraw that. I am sorry.

Trial Examiner: All right.

The Witness: You withdraw the question?

Mr. Weissman: No; just the "yes or no" part.

The Witness: Read the question, please.

Trial Examiner: Read the question.

(Question read.)

The Witness: You want a yes or no answer?

Q. (By Mr. Weissman) Answer it any way you want to. A. I wouldn't say it is an interview. I sometimes conduct [284] a test for them at times; not in every case.

Q. After you have conducted this test, do you come to some judgment based on the test as to whether this man would be a good or a poor candidate for employment in your department? A. Yes.

Q. What do you do with this information? A. I relate the information to the chief draftsman in charge of the engineering department.

Q. What is his name, or what was his name in July of 1957? A. Ernest Halpern.

Q. Do you tell Mr. Halpern whether you think it is a good idea or not a good idea to hire the individual that you have interviewed?

Mr. Raphael: I am going to object to the form of the question. This man is the witness of this counsel here. I think he should be asked pertinent and proper questions. I object to the form of the question.

Trial Examiner: What do you tell Mr. Halpern with respect to applicants for employment where you conduct the tests?

The Witness: I show him the actual results of the test. There are usually some verbal instructions before I give the man the test. I explain to Mr. Halpern what I told the [285] man before he started the test and I give him the results that the man put on paper.

Q. (By Mr. Weissman) Do you also make a recommendation along with that? A. I used to do that with Mr. Halpern. He is not in charge now.

Q. You say you used to make a recommendation to Mr. Halpern? A. Yes.

Q. Have there been times when you recommended to Mr. Halpern that he not hire an employee for your department? A. Yes.

Mr. Raphael: I am going to object to the form of the question. I think the proper question is what has happened when he made recommendations, instead of breaking this thing down and treating this man in a fashion as though he were on cross examination.

Trial Examiner: The objection is overruled.

The Witness: I gave the answer.

Trial Examiner: It may stand.

Mr. Raphael: What is the answer?

The Witness: "Yes."

Mr. Raphael: Read the question and answer back, please.

(Record read.)

Q. (By Mr. Weissman) Do you know of any instance where a man recommended not to be hired in your department was so [286] hired in your department? A. I don't recall any names or particular instances, but I know it has happened.

Q. Do you remember when it happened? A. No.

Q. You have no recollection of the name of the employee? A. No.

Q. Do you recall ever making a statement that you knew of no instance where you had recommended that a man not be hired into your department was so hired?

Mr. Raphael: I am going to object to the form of the question. This man is being impeached by counsel under circumstances that are highly incompetent.

Trial Examiner: Overruled.

The Witness: I lost the question.

Mr. Weissman: Please repeat the question.

(Question read.)

A. I don't recall saying it.

Trial Examiner: You say you don't recall?

The Witness: I don't recall saying it.

Q. (By Mr. Weissman) I show you the affidavit which you identified previously, and ask you to read from the word "I" over here (indicating) until the word "hired" over here (indicating).

(Short pause.)

[287] Can you answer my prior question now?

Mr. Raphael: Will you read into the record what the man looked at? I want to know what he saw.

I would like to have the statement the witness was shown read into the record. If I am not being shown the statement, I take serious exception to this form of examination of a witness.

Trial Examiner: As I indicated before, you will have an opportunity to see the statement, but at this point I think the General Counsel is proceeding properly.

Mr. Raphael: I don't know what the man was shown and I am in no position to even object.

Trial Examiner: Proceed.

Q. (By Mr. Weissman) Will you please answer the prior question, as to whether you ever made such a statement? A. I don't recall making the statement. I recall reading it just now.

Q. Do you recall making the statement to Mr. Levy on September 25, 1957? A. I recall making statements to Mr. Levy. This is not a true transcript of the statements that were made. It is approximately what was said. After we discussed several things, he would write down in his words what was discussed and I had the understanding that this was approximately what was discussed and it was offered for my signature and [288] I signed it.

Q. Did you read the statement before you signed it? A. Yes.

Q. Did you sign each page? A. Yes.

Q. Did you swear that this was true to the best of your knowledge and belief? A. Yes, to my knowledge.

Mr. Raphael: I object. He is badgering the witness. The question has been answered three times.

Trial Examiner: The witness earlier stated that he signed the statement and that he swore to it.

Q. (By Mr. Weissman) Do you know of any instance where a man that you recommended not to be hired in your department was so hired?

Mr. Raphael: I am going to object to the question as having been asked and answered by this witness previously. He said there were such instances, but he couldn't recall exactly the persons and the times.

Trial Examiner: I think you have covered that subject.

Q. (By Mr. Weissman) Mr. Wisniewski, with respect to the junior employees in your department, when Mr. Halpern was in charge of the engineering department, did Mr. Halpern discuss with you the merits of their work? A. Before employment or after?

[289] Q. During the time that the employees were working under your supervision. A. Yes.

Q. Would you tell us the discussion that took place during these occasions?

Mr. Raphael: I am going to object to this as immaterial and incompetent. I don't think it has any bearing on this case at all.

Trial Examiner: The objection is overruled. He may answer.

A. I guess generally he asked me how the man was progressing, whether I thought he showed an improvement or whether I thought he was capable of doing the job or capable of eventually becoming a senior draftsman or advancing himself.

Q. Was this during the trial period for these junior employees when this occurred? A. Yes.

Q. Did you sometimes tell Mr. Halpern that you thought a particular employees would not work out?

Mr. Raphael: I am going to object to the form of the question. Let us have the conversations on these instances without pinpointing anything that Mr. Weissman in particular would like to have.

Trial Examiner: Yes. I think he has already testified as to what the nature of his conversations

were with Mr. [290] Halpern concerning these employees.

Q. (By Mr. Weissman) Do you recall anything else being said at that time? A. Nothing in particular.

Q. Do you recall anything being said about unsatisfactory employees?

Mr. Raphael: I am going to object to that question as having been asked and answered on several occasions.

Trial Examiner: Sustained.

Mr. Weissman: I don't believe that this question was asked at a prior time.

Mr. Raphael: It was.

Trial Examiner: He testified that respect to these junior employees he discussed their qualifications, whether they were doing good work. I assumed when he said whether they were doing good work, he also discussed whether they were doing bad work.

The nature of the work of the junior employees apparently was discussed between him and Mr. Halpern.

Mr. Weissman: In going further, I am trying to determine whether there was any recommendation with respect to unsatisfactory employees.

Trial Examiner: Go ahead.

Q. (By Mr. Weissman) Going back to my question, was there any further discussion about unsatisfactory employees?

[291] Mr. Raphael: At what time? May we have a time and place first?

Mr. Weissman: This would be approximately July of 1957.

The Witness: I don't recall whether there were any meetings in July of 1957 on that subject.

Q. (By Mr. Weissman) How long hav you been chief draftsman of the detailing department?

Mr. Raphael: I object to the form of the question. There is no evidence that he ever was chief draftsman. The only evidence in the case is that somewhere in the statement Mr. Levy wrote down what he thought this man told him, that he was the chief draftsman.

Trial Examiner: Yes. I think so far the witness hasn't testified, nor has there been any testimony, that he was the chief draftsman.

Mr. Weissman: My recollection is the witness stated, after refreshing his recollection, that he was chief draftsman.

Mr. Raphael: No.

Trial Examiner: Let us ask him.

Were you the chief draftsman during the year 1957, or during any part of the year?

The Witness: I don't know whether I was considered chief draftsman on the company books. I often referred to [292] myself as such.

Q. (By Mr. Weissman) How long have you had this position with the company, Mr. Wisniewski?

Mr. Raphael: I am going to object to the form of the question.

Trial Examiner: The objection is overruled. He may answer.

A. Of course, the duties varied slightly over the years, but I would say about seven or eight years.

Q. Until July of 1957, going back, let us say, two years,

July of 1955 to July 1957, did you have discussions with Mr. Halpern in which the subject of unsatisfactory junior employees was discussed? A. I would say yes.

Q. Do you recall the nature of these discussions?

Mr. Raphael: I am going to object to that as immaterial.

Trial Examiner: Overruled.

The Witness: I thought I answered the question before.

Mr. Raphael: I will object to the question on the further grounds that the witness has testified, and I believe I recollect that the question was answered.

Mr. Weissman: I will withdraw the question and restate it.

Q. (By Mr. Weissman) Mr. Wisniewski, do you recall, during these conversations about unsatisfactory employees, making [293] certain recommendations to Mr. Halpern?

Mr. Raphael: Objected to as answered.

Trial Examiner: Overruled.

A. He asked my opinion on occasions.

Q. And did you tell him? A. Yes.

Q. Did Mr. Halpern on these occasions take the employee from your department and place him elsewhere? A. Sometimes.

Q. Do you recall ever making a statement that Mr. Halpern normally follows your recommendation in these instances?

Mr. Raphael: I will object to that as incompetent for the same reason urged heretofore respecting similar material.

Trial Examiner: Overruled.

The Witness: Could I have the question?

(Question read.)

A. I don't recall making a statement to that effect. I might have made a statement similar to that.

Q. Similar to that? A. Like I have made here. Sometimes he follows them and sometimes he doesn't.

Q. I show you your typewritten copy of your statement and ask you to read this entire paragraph, starting with "with" and ending with "department."

[294] (Short pause.)

Do you now recollect making the statement? A. I recollect making a statement somewhat similar to that, to what I just read.

Q. Did you make the statement that Mr. Halpern normally follows your recommendations in these instances to Mr. Levy on September 25th, 1957? A. Or words approximately the same meaning.

Mr. Weissman: I have no further questions of the witness, but I would like to offer General Counsel's Exhibit 35 for identification into evidence as an admission by a supervisor.

Mr. Raphael: I will object, one, to the characterization by counsel, and two, to the admissions in the document.

I would like to look at the document before I can even voice an objection.

Mr. Weissman: Here (indicating).

Mr. Raphael: I want to call something to your attention, Mr. Examiner. Of course, you won't be able to tell this unless you read the yellow sheet and the white sheet. The white sheet is ostensibly or purportedly a copy of the yellow sheet of Mr. Levy.

I am not making any complaints or charges. This does not look correct to me. There is a suspicious element here and I regretfully must make this statement.

[295] The statement begins, "Edward Wisniewski, being duly sworn, deposes and says: I live at 5 Mozart Lane, Bethpage, New York. I am employed by Williamsburg Steel Products as chief draftsman in charge of the detailing department."

In between the two lines, words are written in. I don't know when those words were written in: "I have about fourteen draftsmen under my supervision at present." Then begins the next line: "I attended the meeting held in the engineering department."

That does not look good to me, speaking for myself.

Mr. Weissman: Mr. Examiner, please see the original and the copy.

Mr. Raphael: The copy is a transcription. It was typed later by the Board.

Mr. Weissman: I also wonder in whose handwriting this is in (indicating).

Mr. Raphael: I would like to have Mr. Levy here and I would like to ask him some questions about this piece of paper.

Mr. Weissman: You have your right to subpoena, if you wish.

Mr. Raphael: Through you, Mr. Trial Examiner, I am going to ask that Mr. Levy be produced here perhaps after this witness or as an interlude before this witness gets off the stand.

[296] Trial Examiner: I call your attention to this

interlineation between the line which begins "chief draftsman" and the line which begins "I attended."

Do you know by whom that was written?

The Witness: I don't recall. I don't recall whether it was there when I signed it. It may have been.

Mr. Weissman: Could we find out whether that is in the witness's handwriting?

Trial Examiner: I asked him that.

The Witness: The only thing I wrote on this paper was my signature.

Trial Examiner: That line which is interlined is not in your handwriting?

The Witness: No, sir.

Mr. Raphael: Of course, I object on the grounds heretofore urged, as to the competency or the admissibility of this document, and furthermore, on the grounds that there are some doubts about the writing into that document. I would like to have a *voir dire* on the fellow that wrote it and I would like to have him explain it.

Trial Examiner: We have this witness on the stand at this time.

Do you recall whether at the time this statement was taken from you by Mr. Levy whether you said anything about fourteen draftsmen being under your supervision?

[297] The Witness: I don't recall, except since I have read it.

Trial Examiner: What do you mean by that?

The Witness: I figure as long as it is down there

and I signed it, I must have said something on that order. I don't recall actually saying it.

Trial Examiner: Whether you said it then or not, is it or is it not a fact that at that time you had about fourteen draftsmen under your supervision?

Mr. Raphael: I am going to object to the Trial Examiner's question.

Trial Examiner: You can answer that question yes or no, whether or not it is a fact that at the time you executed this statement you had approximately fourteen draftsmen under your supervision.

The Witness: Yes.

Trial Examiner: Proceed, Mr. Weissman.

Mr. Raphael: I have objected to this.

Trial Examiner: The objection is overruled and the exhibit may be received.

In this case, I think the original statement should remain as the exhibit.

(The document previously marked for identification as General Counsel's Exhibit No. 35 was received in evidence.)

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[321] **Stenographic Transcript of Testimony at Hearing of February 3, 1959.**

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[322] **PROCEEDINGS**

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ERNST HALPERN, a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please give your full name to the reporter.

The Witness: Ernst Halpern.

Trial Examiner: Please state your address.

The Witness: 15 Randy Lane, Plainview, New York.

DIRECT EXAMINATION:

Q. (By Mr. Weissman) Mr. Halpern, what is your present title with the company? **A.** I select my titles quite liberally. Shop superintendent, plant manager. Actually, I run the factories; you know, the shops.

Q. You run the shops? **A.** Yes. The foremen report to me, and so on.

Q. Just give me a general idea of the responsibilities, [323] your present responsibilities. **A.** To see that all men are working; as they come in, schedule the work of the factory, you know, the actual work in the factory. That is what it amounts to.

Q. How many employees are now under your supervision? **A.** I would say around three hundred, four hundred.

Q. Three hundred to four hundred employees? A. Yes.

Q. How long have you had this present job, the one you are working on now? A. Since my predecessor quit and we needed a man right away, it's a year ago.

Q. Approximately one year? A. One year.

Q. Prior to that, what was the nature of your job? A. I was a chief draftsman. Again, we are very loose with titles there. Nobody cares what anybody calls themselves.

Q. Did you supervise the listing department and the detailing department and the apartment house department and the elevator section? A. I supervised all those sections, so the distinction wasn't always just so. The men used to flow back. When we had more work in one section, the men went over.

Q. You supervised them? A. Yes.

[324] Q. How many employees would you say you were supervising at that time? A. Around forty to fifty.

Q. Mr. Halpern, do you recall on September 25, 1957 you were interviewed by an Examiner of the National Labor Relations Board named Sidney H. Levy? A. I don't remember the date, but I was interviewed by him around that time.

Q. Do you recall signing an affidavit that day? A. He gave me a long statement, some twelve or fifteen handwritten pages, and I signed it, yes.

Q. Do you recall reading the affidavit? A. He was writing it down while I was talking. I assumed he wrote it down exactly and I signed it.

Q. Is this the affidavit, Mr. Halpern, that you signed? A. That is my signature.

Q. Does your name appear on each page? A. Yes. That is my signature. That's right.

Q. Just keep looking through them. A. Yes. As I look at it, I don't think I could have read it, it being scribbled like this, but he could have read it. He wrote it.

Q. Did you swear that this was the truth? A. I don't recall that I sworn. I did something like I did here. I got up with my hand. I am pretty sure I did.

[325] Q. Would you read the final paragraph, please?

Mr. Raphael: I will object to that. That is the writing of Mr. Levy. When he says, "Sworn to before me," that doesn't make it necessarily so.

The Witness: I am pretty sure I did not get up, because it is the first time in my life I went through those motions.

Q. (By Mr. Weissman) Did you read the affidavit? A. I couldn't read this. I am pretty sure I didn't. I couldn't read this handwriting if I wanted to.

Q. Are you saying a man of your responsibilities would sign a paper without reading it?

Mr. Raphael: I am going to object to the argument with the witness.

Trial Examiner: He may answer. He is under cross examination of the rule.

The Witness: Shall I answer?

Trial Examiner: Yes.

A. Yes. If you would tell me something to sign and you represented a government agency, I would have no hesitation. Why should I be afraid?

Q. I have here your original affidavit, and I have here also a copy of it. Would you please read it through? A. The whole copy?

Q. Yes.

[326] (Short pause.)

Mr. Halpern, referring to Page 3, the second paragraph, which states: "Since about 1950, we have had a merit review system in the engineering department. Every three months I would sit down with a squad leader, review the work of each individual, and formulate my recommendations to higher management for wages increases," is that true?

A. It is true, but I would also ask the checkers.

Q. I didn't ask you for any further explanation. Is it true? A. True.

Q. Further down, the next paragraph, it reads:

"In April, 1957 I announced orally to the various groups of employees in the engineering department that henceforth an automatic wage increase system would be in operation for them as follows: Up to $74.99 per week—automatic increase of five dollars per week every three months; two, from $75 to $90 per week—automatic increase of five dollars per week every six months; three, over ninety dollars per week—merit increase review every six months, raises to be granted in management's discretion on a merit basis."

Is that true? A. Yes.

Q. Could you tell us what time of day you made that [327] announcement? A. I really couldn't.

Q. You don't remember? A. I don't remember the time of day.

Q. Can you remember whether there were any discussions concerning this increase prior to the announcement of the increase?

Mr. Raphael: Discussions with whom?

Q. (By Mr. Weissman) Discussions with other representatives of management. A. Yes.

Can I talk now, or do I have to answer yes or no?

Q. You can talk. A. It is like this: This system of reviews was in effect since 1950, about, and it used to be about a five-dollar increase every three months, for everybody paid up to sixty-five dollars or so, and five dollars on the average every six months or after, but sometimes management skipped a review for reasons of their own, and sometimes they didn't. Most of the time they got the money otherwise I would have lost my man.

At this time I got after management to give me my increases that I usually requested, and they kept stalling me. They said, "Wait a little." April the 1st the review was due, every third month.

[328] I said, "What are we going to do?"

They said, "Wait. We are in the middle of something. Things will resolve."

I just couldn't get nowhere. Finally, in the middle of April or so they said, "All right, we will have a review. You can tell the boys we will continue with this review system like we had it," and they strengthened it a little, because there was no official statement made on this system that we had on this policy for, I would say, a few years. In 1952, I believe, it was instituted first.

So I went out on the floor and I said, "Look, boys, we have a review system. That is what we have. We are going to adhere to it and we are going to continue with it."

I think the payroll record or whatnot would show it.

Q. Getting back to my original question I asked you whether you had discussions with other representatives of management prior to the review. A. Yes.

Q. The answer is "yes"? A. Yes.

Q. Can you tell me who you talked to about this? A. My superior, Mr. Schwartzberg.

Q. Can you tell me when these discussions started with respect to this particular increase? A. They probably started in—I don't know exactly the [329] date, but I would say since the review was up anyway the first of April, like always, it probably must have started some time in March.

Q. Some time in March? A. Yes, although they didn't want to go along with me.

Mr. Newmark: Who?

The Witness: Mr. Schwartzberg.

Q. (By Mr. Weissman) When did you finally get the green light to go ahead and make this announcement? A. It was in the middle of April.

Q. In the middle of April? A. Yes.

Q. Do you remember whether you got the green light to go ahead the day before you made the announcement, two days before you made the announcement? A. The same day. I was hot. I needed the increases because I couldn't hire nobody. The same day.

Q. The same day? A. Yes, sir.

Q. Had you discussed this matter with Mr. Finkel prior to giving it? A. No. He had nothing to do with wage increases.

Q. He had nothing to do with it? A. No.

Q. This wage announcement that was made you say in April [330] of 1957, is this policy still in effect? A. I don't really know. I am about a year out of the drafting room.

Q. Was it in effect when you left the job in the drafting department? A. I believe it was.

Q. I refer you to Page 4, the first paragraph on Page 4, and I will read it:

"In the month of July, 1957 I was well aware of considerable dissension and controversy among employees in the engineering department over union matters. I understood that the employees were breaking up into two factions. A rumor was current throughout the organization that after one year the National Labor Relations Board certification of Local 66 was no longer effective. I do not know if this belief was legally correct, but I know that the year was up. During the last week of July, 1957 I knew also that the dissension among the employees had reached a point where they were going to do something about it during that week, at the coffee break, which coffee break runs normally from ten to fifteen minutes at four p. m. Ordinarily I try not to be boss before eight a. m. or after six p. m. or during coffee breaks and I try to leave the men to themselves when they are on their own time, even though they are on company premises. During this week particularly, I did not wish to [331] be caught in the middle of a controversy over union affairs which did not concern me, so I made a particular point of being absent from the engineering department during coffee breaks during this period. I know now that the employees held a meeting in the engineering department during the coffee break."

Is that correct? A. Substantially, yes.

Q. Mr. Halpern, did you pay the employees for the time that they spent at this meeting? A. I couldn't very well. I didn't know how long the meeting was, but there was a coffee break always, for many, many years, since I worked for the company, where they got milk and cake.

Q. But did you learn that there was a meeting afterwards? A. They always stuck together around this time. Yes, I learned afterwards, because when I came back there was a lot of commotion, "What goes on here? Nobody is working." It sifted back to me. This went on for two years. It drove me crazy with this thing.

Q. Did you pay them for this particular meeting? A. I didn't pay them for no meeting.

Q. You knew there was a meeting. You said so in your affidavit. A. I found out later on there was a meeting, but no one [332] came to me and said, "Look, there was a meeting," and so on. I got it from the grapevine.

Q. I asked you a simple question. Did you pay for it? A. I didn't know the meeting took place.

Mr. Raphael: I object to the question. It has been answered.

Q. (By Mr. Weissman) When you learned the meeting did take place, did you then take the money out of the employees' salary for that time that they spent at the meeting? A. I had no right to. I had no proof there was a meeting. I was told. We talked around, "There was a little meeting." I tried to pin a fellow down but they never say that.

Q. Did you tell the employees not to do it again?

Mr. Raphael: I will object to that question as irrelevant and incompetent.

Trial Examiner: Overruled.

A. I broke up many meetings before and afterwards, because it was during the working hour and it interfered with my work.

Q. But on this particular occasion you absented yourself so you should not be involved; is that correct? A. I

was absent in all coffee breaks usually during all the time. Naturally, that was no exception.

Q. You knew something was going to happen at that time? [333] A. There was always something going on. No. I didn't say that. I said I know that a pot was boiling, that any day something was going to happen. I didn't want to get caught in it. You just read it to me yourself. Right?

Q. Do you recall what time you returned? A. No.

Q. Can I refer you to your statement just close to the bottom of the paragraph: "I do know it was after 4:30 when I returned to the engineering department, but just what time it was, I do not know."

It was after 4:30; is that correct? A. It is probably correct, yes. I don't recall now whether it was after 4:30. It is in the statement. That is as far as I can go.

Q. When you returned at about that time, you saw that they were still talking and milling about? A. They were sitting and working. I don't know whether you were ever in a drafting room. You feel it. There was no life in there. They sit at the desk with a pencil and they look at each other.

Q. Referring down to the bottom of Page 4, Mr. Halpern, it states: "Subsequent to this meeting I have been told that the independent association has held some meetings in the engineering department after working hours."

You were aware of that during the time that you were [334] head of that department; is that correct? A. They had all kinds of meetings there. At six o'clock—I was in a car pool and I had to leave at six o'clock or I couldn't get home. I live at Long Island. I just left. After all, there—

is a night watchman and other people. I didn't hang around.

Q. I come back to the statement: "Subsequent to this meeting I had been told that the independent association has held some meetings in the engineering department after working hours."

Mr. Raphael: I object. It is hearsay. It is something the witness was told by somebody else and there is no proof the witness knows about it.

Trial Examiner: He can inquire as to whether he doesn't know about it.

Mr. Raphael: He testified he doesn't know. He was told. That doesn't make it correct.

Q. (By Mr. Weissman) You were aware of the fact that meetings were going on?

Mr. Raphael: I am going to object to the form of the question.

Trial Examiner: Were you aware of the fact that meetings were held?

The Witness: No. I was never present. How would I know? Usually I heard a few days later some rumors. It [335] travels like this.

Q. (By Mr. Weissman) Did you ever go to the employees and tell them not to meet? A. To the employees and tell them not to meet? No.

Q. On company property? A. They never asked me whether they can meet, so I couldn't tell them don't. They didn't ask me things.

Q. Even though you were aware that they were meeting?

Mr. Raphael: I am going to object to the form of the question. The witness didn't say he was aware.

The witness said he heard it indirectly, and then he wasn't sure that it was so. You cannot form an opinion on some opinion and then corroborate it.

Q. (By Mr. Weissman) Mr. Halpern, may I refer you, starting on the last word on Page 4 and going to Page 5, to this:

"On one occasion only I saw some little notice stuck up on a wall near the time clock saying there would be a meeting of the independent association at some time."

Is that true? A. Yes.

Q. So that you knew meetings were going on? A. I knew that the meetings were going on somewhere, but they never told me where and what, and to tell you the truth, I kept away from them on those matters, because as I said in this statement, I was always caught in between. In the same [336] paragraph I also said—may I read?

Q. Yes. A. "From time to time notices have been posted on the walls or distributed on employees' desks announcing bowling games, circulars from Local 66 have similarly been distributed or posted on the walls."

If those notices would be abusive or controversial, I have taken them down. Otherwise, I have not bothered about them.

Q. What you are saying is that you saw the notice on the wall and you paid very little attention to it, except that you knew there was a meeting?

Mr. Raphael: I am going to object to the paraphrasing of the witness's answer.

Trial Examiner: Objection sustained.

Q. (By Mr. Weissman) Mr. Halpern, where was your office when you were the head of the drafting department? A. On the first floor.

Q. Is that the same floor as the drafting department is located in? A. Not all of them. There are separate rooms. Some are L-shaped, or so. I could only see one department from my desk, one section.

Q. Is that the same floor where the other executive offices are located? [337] A. Yes.

Q. How many feet would you say there were between your room and the drafting department? A. One just starts right away from my desk over there. The other is about one hundred feet or fifty feet to the side. How long is this about? I will give you an idea.

Q. Can you tell us the distance? Perhaps we can then measure. A. About the size of this room. A little bigger, I would say.

Q. That, you say, would be where another department was located? A. Yes.

Q. Could you see that department from where you were sitting? A. No.

Q. One department you could see and the other you could not? A. The other three I could not.

Q. Which one could you see? A. The listing. Where they did most of the listing.

Mr. Weissman: Could we estimate the distance between the witness and the end of the room is roughly fifty feet, for the record?

Mr. Raphael: I don't think it is as much as that.

Mr. Weissman: Forty feet?

[338] Mr. Raphael: Don't you have facilities for measuring rooms?

Trial Examiner: We better agree on something or have it measured.

Mr. Raphael: It is between forty or fifty feet.

Mr. Weissman: I will accept that, between forty and fifty feet.

Q. (By Mr. Weissman) Mr. Halpern, would you tell us where the other executive offices are located in relation to your office and the drafting department? A. The other end of the building, up front.

Q. There is a long corridor? A. A very long corridor.

Q. The offices are located in that corridor? A. Off the corridor, at the other end.

Q. You said you were in a car pool. Who did you travel with at that time? A. There was my brother-in-law; there was one fellow from the shop; there were a couple of boys from the drafting room.

Q. The nights that they had the meeting they didn't go with you and you went home alone? A. No; they went with me. The car pool took off. Whoever came, came; whoever didn't, they just didn't come along.

Q. But on those nights certain of the employees didn't go? [339]. A. Most of the time they went with me.

Q. You mean they met without them? A. I don't know.

Mr. Raphael: I object to the form of the question.

Trial Examiner: Sustained.

Q. (By Mr. Weissman) Referring to Page 3, Mr. Halpern, on the bottom of the page where it states, "Over the past months and years I have had general conversation with employees about pension plans," could you tell us what those conversations were about? A. Sure. First of all, we talked about pensions, retirements, that it would be nice to have this and that, security, like most wage-earners are interested in. Then there were rumors—I don't know whether it was during or before this union business started.

One company took out a pension plan for all of the employees. I think the company is defunct now, National.

The boys were saying that it would be nice to have it, and I agreed with them. You know, general things, about benefits, on a personal basis. Maybe some day we will have it, I hope.

Q. Mr. Halpern, going back to the wage increase of April, 1957— A. When?

Q. April. [340] A. I haven't said it was in April, 1957.

Q. You stated in April, 1957 you announced orally to the various groups— A. In April, 1957 I announced orally. Oh, it is my mistake. I thought you said April 19th, 1957.

Q. Under that wage increase, employees who were making under $74.99 were to receive a five-dollar increase every three months. That wage increase went into effect in the same month; is that correct? A. After it was announced, it went into effect, I imagine.

Q. Do you know an employee by the name of M. McCain? A. "M"? No.

Q. You don't think his first initial is "M"? A. I don't think so.

Q. Mr. Halpern, do you know an employee by the name of McCain? A. Yes.

Q. Do you recall what kind of work he was doing? A. He started out as a beginner and then he left us. A lot of others quit during that time. He was a lister, a beginner lister. He never made the grade.

Q. In April of 1957, do you know approximately what Mr. McCain was earning? A. No, sir.

Q. Do you have any knowledge as to why Mr. McCain received [341] a $7.50 increase rather than a five-dollar

increase? A. He was one of three boys we hired at that time. He was one of the most promising. He caught on pretty fast. He left. I hated to let him go. He left for more money. He went to a competitor. I think he got twenty dollars more. It was National Colomine.

Q. Did you—

Mr. Raphael: Wait. Wait until the witness completes his answer.

Trial Examiner: Read the answer so far, Mr. Reporter.

(Record read.)

Trial Examiner: If you have anything to add, you may add it.

The Witness: When National Colomine folded up, he came back. He said now he wants about $110 or he wouldn't come back. It means he was really high up there.

Q. (By Mr. Weissman) Are you telling us that you gave him an extra $2.50 that month because he was a promising employee? A. Yes. He was married.

Q. With respect to an employee by the name of Luiser, do you know that employee? A. Yes.

Q. Do you recall what kind of work he was doing? A. He was a very good boy, too. There were three of them. He was the second. The third one was McCogliano. This [342] boy Luiser left me, too. I don't know where he is working. I think he went into the trucking business, for more money. It is the same old story.

Q. With respect to Mr. Luiser, is that why Mr. Luiser received $7.50 instead of five dollars that month? A. Yes.

Q. With respect to an employee by the name of W. Watkins, do you know that employee? A. Walter Wat-

kins. A good boy. He was a checker. He was in the elevator department. Right now he is a checker. At that time he was checking or listing.

Q. Do you know why he received seven dollars instead of five dollars? A. It probably was the same reasoning. I had some others that didn't get anything.

Q. Do you know an employee by the name of R. Keil? A. Robert Keil.

Q. What kind of work is he doing? A. I wish he would have stayed with me. He was an excellent man. He just took up and left in the middle of this hullabaloo with the union. He had enough of it, he said. We couldn't hold him; no money in the world.

Q. Do you know why Mr. Carey received a $2.50 increase instead of a five-dollar increase? A. This instance I recall. There was a question with him [343] that he felt he was at a certain level with some other people and he was passed by before, and unless he gets that $2.50 he is going to leave.

It like builds up in a man. He gets insulted. Sometimes it could be a different desk, a different location by the window, or $2.50 in pay. He sits at his desk and it eats at him. One day he got up and he left.

Q. And that is why he received $2.50 instead of five dollars? A. No. He got a raise about three months before that. I am talking from memory. I have no notes. He wasn't supposed to get the $2.50. Can you check me on that thing? He got five dollars I think three months before, and then he was supposed to get nothing. So he got the $2.50, if I may say, to shut him up, and he left me on top of it.

Q. Mr. Halpern, referring to August of 1957, the three-

month period after April would normally be July of 1957, and that was when you normally would give out increases? A. That's right.

Q. There appears to be many substantial increases granted in August of 1957. Can you tell us about that? A. I think we skipped July. This year we lost about twenty men.

Mr. Weissman: Mr. Examiner, I request that the witness be made to answer the question.

[344] Mr. Raphael: You have asked a question.

Mr. Weissman: He is not responsive to the question. He has not been responsive to the questions.

Trial Examiner: He may answer.

Go ahead.

A. I was after management during this time to grant me larger increases because I was losing men left and right. In July I was again pushing and pushing and nothing happened. Finally I went in to Mr. Schwartzberg and I told him that we have twenty school jobs on the board, we have four thousand man hours in the red, and I cannot run this department unless he gives me something to work with. I need increases and I need raises so I could go out and hire people. I raised quite a Cain about it.

They were hatching back and forth. The outcome was that finally, a little too late, in August, they granted increases. I personally think they wanted to skip July, policy or no policy.

Q. You mean you don't know that W. Taylor, I. Rifkin, R. Halpern, Chicetti, and seventeen other employees received increases in July? A. Offhand I don't recall. They might have. Seventeen?

Q. More than that. Actually, about twenty-two or twen-

ty-three. You don't know that? A. I had sixty men in the department. They all should [345] have gotten increases in July, based on the six-monthly and three-monthly wage increase. You say only seventeen got it?

Q. I said about twenty-two. A. Then that is your answer.

Q. What you are now saying is there were increases given out in July and August?

Mr. Raphael: He didn't say that. The witness said they skipped July.

A. I don't recall July. I imagine you are telling me the truth.

Q. What was your practice with respect to new employees? Were they given a probationary period? A. I would say there was nothing particular fixed. We had some as long as a year that we carried them, figuring maybe they will make it. Some made it in a few months and some made it only after a year.

Q. With respect to employees who were there let us say two or three months and a wage increase month came about, did they normally get the wage increase or were they by-passed until the next wage increase? A. It depends on his performance. If the man was promising and good and we figured that after three months he is producing, carrying his own—usually I figure the first few months I don't get nothing in return, we are just training him. I took it up with the checkers, and then I took his folders out [346] and checked it myself, and if he was promising, he got it.

Q. Was it at any specific time, or was it on a case-to-case basis? A. It was the first three months. It was

April 1st, July 1st, October 1st, January 1st. You had to be there three months at that time.

Q. In other words, if he was there three months, he got the increase. If he wasn't there three months, he didn't get it? A. If he was there three months and wasn't good, he got nothing.

Q. Suppose he was there two months and an increase came along. Did he get it? A. We made exceptions.

Q. You mean that was an exception to the rule? A. Well, we had no contract with the union and so on. We made the rule up as we saw fit.

Q. What was your customary policy? A. If the man was good, we gave him a raise, but on the anniversary date, or whatever you want to call it. It was on the quarterly date. It was sometimes two months and sometimes three months we gave him an increase. When he was high up, after seventy-five dollars or sixty-five dollars—I don't recall—it was every six months.

Q. If a man was there two months and you weren't quite sure about him, you would pass him by until the next increase? [347] A. I would make up my mind. Either I give it to him or I don't. If I felt he didn't deserve it, I wouldn't give it to him.

Q. Even if he was only there two months? A. If he was there two months and deserved it, I tried to get it for him, like in other cases. If he didn't deserve it, I didn't consider him.

Q. Were there times when you felt it would be best to wait until the next increase to determine whether he should get an increase or not? A. I don't follow this one.

Q. In other words, were there employees who you decided to wait; you couldn't make up your mind at that

moment and you decided to wait until the next increase? A. If I waited, it means I made up my mind he shouldn't get it.

Q. He shouldn't get it? A. I couldn't wait to make up my mind. I had to make it up. Either he gets it or he doesn't.

Q. You wouldn't necessarily lay him off? A. No, not necessarily. I used to call fellows in and say, "Look, you haven't shown any progress. Try better."

Mr. Weissman: I would like to mark this for identification, please.

[348] (The document above referred to was marked as General Counsel's Exhibit No. 36 for identification.)

Mr. Weissman: For the record, General Counsel's Exhibit 36 for identification is an affidavit signed by Ernst Halpern, dated September 25, 1957.

At this time I offer the affidavit in evidence as General Counsel's Exhibit 36.

Mr. Raphael: I will object to it as incompetent and containing within its framework many hearsay statements, which I have read, statements that this witness subscribes to as rumors, things that are uncorroborated. If this can rise to the dignity of evidence, then anything can become evidence.

Trial Examiner: For what purpose is it offered?

Mr. Weissman: It is offered as an admission by this man who is the superintendent of the plant. It contains admissions and I think it is very important that it be introduced, so that it can be further examined.

Trial Examiner: Have you interrogated him about those admissions?

Mr. Weissman: I have interrogated him about those admissions, that is correct; some of those admissions.

Trial Examiner: Then what is the need for it? Apparently he has admitted the admissions that you are interested in. Is that so?

[349] Mr. Weissman: In view of your questions, may I ask several other questions?

Trial Examiner: Yes.

Q. (By Mr. Weissman) I refer you to Page 1 and I refer you to the paragraph which starts, "Herbert refer you to the paragraph which starts, "Herbert Jacobson": "Herbert Jacobson is a coordinator and my personal assistant. He has a desk in my office."

Is that true? A. Yes.

May I add something?

Q. No. I am satisfied with your answer.

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[405] EDWARD THIBOU, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please give your full name to the reporter.

The Witness: Edward Thibou.

Trial Examiner: Please state your address.

The Witness: 562 West 144th Street, Manhattan.

DIRECT EXAMINATION:

Q. (By Mr. Weissman) Mr. Thibou, are you employed by Williamsburg Steel Products Company? A. I am.

Q. Could you tell us how long you have worked for this [406] company? A. A little over eight years.

Q. Can you tell us what department you work in? A. In the elevator department.

Q. Have you worked in this department during the entire time? A. Almost all the time, yes.

Q. Do you recall in July of 1957 attending a meeting of employees on company premises? A. Yes.

Q. Would you tell us how you were notified of this meeting? A. To the best of my recollection, I think some of the fellows came around and said there would be a meeting during the break time, during the coffee break, and there would be some discussion with reference to the situation regarding the union.

Q. Do you recall which fellows came around? A. Right now I can't.

Q. Do you remember what time the meeting started? A. I assume it started around a little bit before four, I guess. I am not sure.

Q. Do you recall approximately how long it lasted? A. Maybe an hour or so.

Q. Where was it held? A. It was held in the drafting room.

[407] Q. Is that where you worked? A. There are different sections. I worked in the elevator department. This was held in the drafting room.

Q. Did you have to go from the elevator department to the drafting room to attend the meeting? A. Yes.

Q. How close is this other area or room to where you were? A. Roughly fifty feet, I guess.

Q. Fifty feet? A. I assume. I never measured the distance.

Q. Is it another room? A. It is another room, yes.

Q. Where do you normally have your coffee during coffee break? A. In any one of the rooms.

Q. How do you get your coffee? A. Actually, they call it a coffee break.

Mr. Raphael: It is milk, I understand.

The Witness: Actually, it is milk and cake.

Q. (By Mr. Weissman) Where do you get the milk and cake? A. I think it is usually brought around to the individual department.

Q. Except for this particular day, do you normally have your milk and cake in your own room? A. The time is your own. Actually, you can go around to the [408] other departments, if you so desire.

Q. I asked you a question with respect to your normal practice.

Mr. Raphael: Objected to as already answered.

Trial Examiner: The objection is overruled. He may answer.

Q. (By Mr. Weissman) Is it your normal practice to have it in your own room or some other room? A. It depends upon the individual. Some people like to stay in their own room and some go to some other department.

Q. What do you do? A. Sometimes I stay in the elevator department and sometimes I go around to the other departments.

Q. How long does this break last? A. I don't think there is any stipulation on it. It lasts until Ernie Halpern tells us to go back to work.

Q. Does he normally tell you to go back to work after the break is over?

Mr. Raphael: Who is "he"?

Mr. Weissman: He said Mr. Halpern.

Q. (By Mr. Weissman) Does Mr. Halpern normally tell you to go back to work after the break is over? A. As a general rule.

Q. With respect to the meeting that we were discussing, can you tell me what occurred at this meeting? Just start from [409] the beginning and tell us the entire story of what occurred during the meeting. A. I don't obviously remember all the details that took place.

Q. Just tell us what you can recall of it, Mr. Thibou. A. As I recall, they had an alternative contract to be read off to the men. They had an alternative contract read off to the men, since they felt Local 66 wasn't doing enough for the men at the time and they weren't getting any particular place with the union. This was a proposed contract the men wanted to institute for themselves. They read the contract, after which a vote was taken on the contract.

Q. With respect to the vote that was taken, do you remember the results of that vote? A. It went in favor of this particular contract.

Q. But do you recall what the results were? A. You mean the numerical figures?

Q. Yes. A. Not now.

Q. Do you recall signing an affidavit on September 3, 1957 before Sidney H. Levy, an Examiner of this Board? A. I don't remember the exact date, but I know I signed an affidavit.

Q. Do you have any recollection at this time of having stated the results of the election at that time? [410] A. If it is in there.

Q. Would it refresh your recollection? A. You mean if I saw it again?

Q. Yes. A. Naturally if I see it in there it would refresh my memory.

Q. I show you the original affidavit, which is a handwritten copy, and I show you your signature. That is your signature? A. Yes.

Q. And also your signature on each page? A. Yes.

Mr. Raphael: Would you please mark that for identification?

Mr. Weissman: Yes.

Trial Examiner: That will be 37.

(The document above referred to was marked as General Counsel's Exhibit No. 37 for identification.)

Q. (By Mr. Weissman) I now show you your original and also a typewritten copy. I refer you to this section over here, starting with "there" and ending with "contract." Would you please read it? A. Yes.

(Short pause.)

[411] Q. Do you now recall the results of that vote? A. It says on the paper there it was twenty to fifteen in favor of the contract.

Q. Is that your present recollection? A. Naturally at this time I would remember better than I do now, because it just happened a few days or a week before this testimony was given.

Q. So it is your testimony that at the time you signed this affidavit the results of the election were fresh in your mind and you stated so in the affidavit? A. I don't follow the question.

Q. At the time that you signed this affidavit, the results

of the election were still fresh in your mind, and you put it down in the affidavit? A. Yes.

Q. And you swore at the time you signed this affidavit that it was true to the best of your knowledge and belief; is that correct? A. I don't know if I had to swear to it or not at that time. Maybe it is down there. I don't remember. If it says so.

Q. Would this refresh your recollection? Would you please read the final paragraph?

(Short pause.)

A. That is what it says.

Q. Is it your recollection now that you swore that the [412] information was true? A. It says down there that it was this date, *et cetera, et cetera.*

Q. It is your present recollection that you read this affidavit before you signed it? A. I don't think I read it in its entirety before I signed it. Mr. Levy asked me to sign the bottom of each page and I did so.

Q. Mr. Levy handed you the affidavit to read? A. I don't remember now.

Q. You don't recall? A. I remember signing each page.

Q. Do you recall specifically who read the proposals at this meeting? A. Not now. I don't remember.

Q. Would you recall whether it was Jacobson? A. It might have been.

Q. After the ballot was taken, after the vote was taken, did the employees present sign papers? A. Yes, I believe they did.

Q. Could you tell us what kind of papers you signed? A. One was requesting decertification from the union. The other one I don't remember.

Q. Did you attend any of the later meetings that oc-

curred in later months? [413] A. What type of meetings are these?

Q. Meetings on company property. A. From time to time they had gatherings after the work day was over to discuss various aspects of the situation regarding the union and proceedings, *et cetera.*

Q. Do you recall at these meetings that officers were elected of some organization? A. I believe they did have elections.

Q. Also, a constitution and by-laws were drawn up? A. I assume they must have had a constitution and by-laws.

Q. Do you recall what hours of the day these later meetings were held? A. After the work day.

Q. What time was that? A. It used to be six o'clock. Now it is 5:30.

Q. But at that time it was six o'clock? A. I don't remember exactly which time you are referring to.

Q. What room were the meetings held in? A. They weren't always held in the same room. It depends on wherever the fellows gathered.

Q. Tell us which rooms were used over a period of time. A. Sometimes it was downstairs on the third floor, where the elevator section is, and sometimes it was on the fourth floor.

Q. When it was held on the fourth floor, what room was it [414] held in? A. I think it was usually held in the detailing room.

Q. In the detailing room? A. Yes.

Q. Where is the detailing room on the fourth floor? A. At the end of the corridor.

Q. Where is it in relation to Mr. Halpern's office when he was chief engineer? A. On the right-hand side of the corridor is the detailing room, and on the left-hand side

is the listing room, and just before you get to the listing room is the office that Mr. Halpern was occupying.

Q. Could Mr. Halpern see the detailing room from his office?

Mr. Raphael: I will object to that as purely in the realm of speculation and immaterial. This was after hours. Mr. Halpern wasn't even there. What difference does it make even what he could see in the day time?

Trial Examiner: Overruled.

A. He had a partition in between the two rooms. What he could see in there, I don't know.

Q. Was it an opaque partition or was it a glass partition? A. A glass partition, and they have different things on the glass, probably notes and calendars. I don't know whether he could see through them or not.

[415] Q. What is on the other side of the glass partition between Mr. Halpern's room and the other room? What is the other room on the other side of the glass partition? A. I think I said before that there is a detailing room on one side and the listing room on the left-hand side, and in front of the listing room was Mr. Halpern.

Q. If Mr. Halpern looked through the glass, what did he see? What room could he see?

Mr. Raphael: Objection.

A. The listing room.

Trial Examiner: Let him answer.

Q. (By Mr. Weissman) Could he also see the detailing room from his office? A. You asked me that before. I said there was a partition between the listing room and the detailing room. They have things on the partition itself. I don't know whether he could see through or not.

Q. Was it a glass partition? A. Yes.

Q. You said there are things on it. Do these things cover all the glass or just part of the glass? A. I don't know exactly the area it covers.

Q. What department did you say you worked in? A. The elevator department.

Q. Was that on the fourth floor? [416] A. At this time I think so. Now we are on the third floor.

Q. Where is the drafting room in relation to the detailing room? A. I don't know what you mean as to the distinction between the drafting room and the detailing room.

Q. Are we talking about the same thing when we use the terms "drafting room" and "detailing room"? A. There was the detailing room and the listing room, and also the elevator department.

Q. Going back to the July, 1957 meeting, which was the meeting you first referred to, was it your testimony that it occurred in the drafting room? A. I might have said "drafting room." I probably meant detailing room.

Q. It occurred in the detailing room? A. Yes.

Q. So that between the detailing room and the next room is a glass partition; is that correct? A. Yes.

Q. Right next to that is Mr. Halpern's office? A. In front of the listing room.

Q. And Mr. Halpern's office is a glass-enclosed office? A. Yes. There is glass up above a certain height.

Q. Glass up above a certain height? A. Yes.

[417] Q. Could you tell me, by pointing to something here, what height? A. About three feet from the floor.

Q. In other words, it is glass above three foot? A. Yes.

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[468] **Stenographic Transcript of Testimony at Hearing of February 4, 1959.**

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[469] PROCEEDINGS

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[487] ALFRED FINKEL, was re-called as a witness by and on behalf of the General Counsel, and having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued):

Q. (By Mr. Weissman) Mr. Finkel, you testified the last time that you were under examination that you were a partner in the firm of Williamsburg Steel Products Company.

I would like to know what your duties are, general duties for the company. A. Well, I am in charge of the office, overall responsibility for all finances, administration, collections, billings, purchases, contracts, labor contracts, union contracts.

Q. Are you in charge of the payroll department? A. That is part of my duty.

Q. General Counsel's Exhibits 30-A, B and C, were they prepared under your supervision? A. What do you mean by prepared under my supervision?

Q. Tell us what this represents and how it came into being. [488] A. May I have it, please?

Q. Yes (handing documents to the witness). A. These are work sheets used by the payroll department. As a matter of fact, I recognize the handwriting of the girl who pre-

pared this. Who in turn turned these over to Mr. Schwartzberg, who in turn turned them over to Mr. Halpern and the various steps of how they arrived at the final amounts to be put on here was between them, and finally this was turned in to the payroll department as to how to adjust any increases that came up at the time.

Q. Who actually ordered the preparation of this document? A. This was probably done by the girl. Perhaps Mr. Schwartzberg did, just as a working so that they can look any time they had a review, to look from one period to the other. It had the whole story in front of them.

Q. It is your testimony that this was prepared by employees under youur supervision but ordered by someone else other than yourself? A. I don't know who ordered it. She might have came to it herself or perhaps Schwartzberg did. I don't know.

Q. You recall, Mr. Finkel, that when you testified the last time you read into the record certain increases which were granted by the company and you read into the record the increases based on what you could see from these documents. A. That's right.

[489] Q. Referring specifically now to 30-A and B, which are the long two pages, when you read the increases for August of 1957 and July of 1957, they were both merged into one compilation by you; is that accurate? A. No, I wouldn't think so.

Mr. Weissman: Mr. Examiner, it is my recollection—I think I am correct on this—that when it came to July and August there was some confusion about it and it was merged into one compilation.

The Witness: I couldn't have said that, because

these sheets indicate that there were two different periods.

Q. (By Mr. Weissman) In other words, there were increases given out in July and increases given out in August? A. It would appear that way, that there were—you see—

Q. Without going into the specifics, there were increases given out both in July and in August?

Mr. Raphael: Is that a fact?

A. The sheets seem to indicate that there were two increases in July—let me check this.

Q. To save time, you may answer the question. I just want to know whether increases were given out in July and August. A. From their sheets, I would gather that there were.

Q. Referring to the small sheet, which is General Counsel's 30-C, and also looking at the top of the page which has the months listed, it appears that after April we have July 1, [490] 1957 and then in column five, it simply states "Total 40 Hours, July 1 increase," and there is no column for August on this small sheet. Is that correct? A. That's right.

Q. With respect to the other two sheets, which are the long sheets, it appears that in column four both of the longer sheets, the "July" was crossed out and "August" was written in. A. You are talking about sheet number one?

Q. You have two longs sheets and in both cases there were two columns of July, but then the second column, "July" was crossed out and "August" was written in. A. Yes.

Q. But on the small sheet that was not done. A. Yes.

A. Finkel, re-called for General Counsel, Direct.

Q. Do you know whether on the small sheet whether this column five should in fact read "August"? A. I don't know.

Mr. Weissman: Mr. Examiner, may we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Proceed.

Q. (By Mr. Weissman) Mr. Finkel, referring to April, 1957, within the long sheets, which starts at the bottom, Charles [491] O'Regan— A. It starts on the top with Charles O'Regan.

Q. That is correct.

Would you, starting from the top, give us the increase of any individual in April who was making under ninety dollars a week? A. In April of 1957 all people who were making under ninety dollars?

Q. Yes. Start from the top. Give us the name and the amount. A. Charles O'Regan.

Q. Tell us how much. A. Let me try to understand how Schwartzberg does this.

Mr. Raphael: Is this Schwartzberg's writing?

The Witness: Yes. I don't know whether he started at eighty-two dollars and he got a five-dollar increase, because that's the way the sheets look.

(Witness consults with Trial Examiner.)

Mr. Weissman: Mr. Examiner, if the witness is competent to give testimony with respect to these documents, then he should do so. Otherwise, his past testimony on these documents is not competent.

Trial Examiner: Well, the exhibit is in evidence and I think it can probably be figured out.

Mr. Weissman: Mr. Examiner, it is my own opinion from [492] looking at this document that it is extremely difficult to interpret it unless we do have this testimony in addition to it.

Trial Examiner: Well, go ahead.

Q. (By Mr. Weissman) What is your testimony with respect to Mr. O'Regan? A. In April you asked for men under ninety dollars.

Q. Those earning under ninety dollars; give me the amount of the increase and the name. A. Charles O'Regan went either from seventy-seven dollars to eighty-two dollars, a five-dollar increase, or from eighty-two dollars to eighty-seven dollars, a five-dollar increase. I cannot tell accurately which is the situation. It would appear to be the former.

Mr. Weissman: In view of this testimony, I suggest that we bring Mr. Schwartzberg in to testify on these documents.

Trial Examiner: I don't think that is necessary, judging by the conversations we had off the record a few moments ago.

I think if there is any doubt in the testimony of the witness—and he just indicated that he thought he agreed with your interpretation, although he wasn't sure—but I think it can be figured out there as to what the method was and what the various pay increases were.

[493] In that first case we discussed there and which at first seemed to be clouded, it was cleared up when we analyzed the earlier figures. And I assume the same

system was used with respect to the others in the absence of testimony to the contrary.

Mr. Weissman: We will find when we get to August that the increases are not listed at all and you have to interpolate as to what was given before and after.

If we are to have this type of testimony, then I think this witness is not competent.

Trial Examiner: Go ahead with your question.

Q. (By Mr. Weissman) Would you continue with April? A. Oscar Goodwin would be seventy to seventy-five dollars, a five-dollar increase.

Q. Continue, please. A. Taylor, W. Taylor, went from sixty-nine dollars to seventy-four dollars, a five-dollar increase.

A. J. Iacobino went from fifty-six dollars to sixty-one dollars.

Q. Mr. Finkel, with respect to Mr. Iacobino, I note that the part that you are reading from has been crossed out. Can you tell us what this means? A. It means that the man is no longer in our employ and need not be reviewed up to date. He probably left some time during 1957 because this was his last review date.

[494] Q. So that it would be some time after April that he left? A. It might be during April, I don't know. I couldn't tell from here.

Q. But he is no longer with the company? A. The sheets would indicate that, yes.

Q. Would you proceed, please? A. Rifkin went from fifty-eight dollars to sixty-three dollars, a five-dollar increase.

R. Halperin went from sixty-eight dollars to seventy-three dollars, a five-dollar increase.

J. Johnstone went from seventy dollars to seventy-five dollars.

Chicchetti went from sixty-five dollars to seventy dollars.

J. J. Maloney went from ninety dollars to ninety-three dollars, a three-dollar adjustment.

Q. Now, Mr. Finkel, the one prior to this, the name prior to this that you just discussed was Chicchetti? A. Yes.

Q. And the one after that, in my analysis of this particular column, would be line 26, Mr. Calculli. Is that correct? A. No. You asked for all people who received adjustments and made up to ninety dollars a week, and, therefore, the next one would be Maloney.

[495] Q. I said under ninety dollars. A. I'm sorry. I thought you said up to.

Mr. Raphael: That is what I heard you say.

Q. (By Mr. Weissman) I want under ninety dollars.

Mr. Raphael: You mean up to eighty-nine dollars?

Mr. Weissman: Yes.

Mr. Raphael: You should say so.

Mr. Weissman: I did say so.

A. Then comes Calculli, from sixty-three dollars to sixty-eight dollars, a five-dollar adjustment.

Vaval, sixty dollars to sixty-five dollars, a five-dollar adjustment.

William Evans, sixty dollars to sixty-five dollars.

Ventz, fifty-five dollars to sixty dollars.

William Hanks, fifty-five dollars to sixty dollars.

McCain, fifty dollars to $57.50, a $7.50 increase.

Colier, sixty dollars to sixty-five dollars, a five-dollar increase.

Melnick, sixty dollars to sixty-five dollars, a five-dollar increase.

Luizer, fifty dollars to $57.50, a $7.50 increase.

Q. Would you continue on the next long page, please? A. Diakomis, eighty-eight dollars to ninety-three dollars, a five-dollar increase.

Q. Just one moment, please.

[496] Go ahead. A. Freddie Dzurzynski. We refer to him as Freddie D.

Q. What line is that? A. Seventeen. He went from $87.50 to $92.50. That is a five-dollar adjustment.

Hiscock, eighty-eight dollars to ninety-three dollars, a five-dollar increase.

Toby Langiulli, $87.50 to $92.50, a five-dollar increase.

Robert Kyle, eighty dollars to $82.50, a $2.50 increase.

Q. What line is that, Mr. Finkel? A. Twenty-seven.

Q. What was that increase that you just mentioned? A. $2.50.

Q. Go ahead. A. W. Watkins, sixty-nine dollars to seventy-six dollars, a seven-dollar adjustment.

Orlando, eighty-five dollars to ninety dollars, a five-dollar adjustment.

Fred Areizaga, seventy dollars to seventy-five dollars, a five-dollar adjustment.

That completes that page.

Q. Let us turn to the smaller sheet. A. I think there is nothing there. They are indicated as office boys.

Q. Starting back in the first sheet that we were working on, [497] is it my understanding that these sheets con-

tained lists of the names of employees that are not in the certified bargaining unit?

Mr. Raphael: Where did you get that understanding from, Mr. Weissman?

Mr. Weissman: Mr. Finkel was skipping the office boys.

Mr. Raphael: The office boys are on the third sheet.

Mr. Weissman: We were discussing the third sheet.

Mr. Raphael: He said there was nothing there.

Mr. Weissman: There are four office boys listed.

Q. (By Mr. Weissman) Were they part of the bargaining unit, if you know? A. To be truthful, to this day I don't know what the bargaining unit consists of.

Q. Your answer is that you don't know whether the office boys are included or excluded? A. We never came to an understanding of what the unit was to consist of.

Q. Going back to the first sheet which we examined, which was the sheet that started with the name of O'Regan on the top, would you go through your April, 1957 column and see if you can determine whether any individuals making under ninety dollars were not given an increase in April of 1957?

Mr. Raphael: Doesn't this exhibit speak for itself?

Trial Examiner: I should think it does. I don't see [498] anything to be gained by this oral examination.

Mr. Weissman: For one thing, there was prior

testimony and in my opinion that testimony was not accurate and I would like to be accurate.

Mr. Raphael: The prior testimony by whom?

Mr. Weissman: By Mr. Finkel.

Mr. Raphael: Can you point out the prior testimony?

Trial Examiner: Let us not get into an argument.

Mr. Raphael: He will argue with this witness.

Trial Examiner: I don't see anything to be gained by asking this witness questions, the answer to which is that he is going to read off the exhibit.

Mr. Weissman: May I point out, sir, that this exhibit contains many names that are crossed out and many areas that are crossed out. For one thing, the witness had testified previously to compilations in which he included these things.

Trial Examiner: Those matters you can inquire about, if they are anything of that nature, but with respect to the other matters—

Mr. Weissman: In addition to which, to the best of my recollection, when this witness testified to July and August he merged the two in one compilation. What I am trying to do now, frankly, is simply to try to straighten out the record, to put in the facts.

[499] Trial Examiner: Before he was testifying from the exhibit, wasn't he?

Mr. Weissman: Yes.

Trial Examiner: Now he is testifying from the exhibit?

Mr. Weissman: That is correct.

Trial Examiner: Ultimately isn't the exhibit the thing I am going to go by?

I will say this: It may be helpful rather than having me go through this, to have somebody tell me how many increases were granted during that month and to whom, but I hoped that you would do that in your briefs.

Mr. Raphael: I am perfectly willing to do that.

Trial Examiner: I don't see anything to be gained by asking this witness questions and he is going to look at the exhibit and give the answers.

Mr. Weisman: May I show you the exhibit once more? If you think it is all right for you to go through—

Trial Examiner: No. What I prefer you to do is to ask you gentlemen to analyze these exhibits yourselves. You can do it in briefs. Whenever you agree, I will accept your statements; if you disagree, I will have to go over the record myself and find out what the truth is and which one of you made a mistake.

Mr. Weisman: In that case, Mr. Examiner, just to be sure that the record will disclose certain facts —which I [500] think is to the interest of everyone to have on the record—I will ask the witness this:

Q. (By Mr. Weisman) Mr. Finkel, in this exhibit, whenever a name has been crossed out it means that this individual had worked for the company and no longer does work for the company? A. That is correct.

Q. In the case of an employee by the name of J. DeMartino, which is on the page which begins A. Furst, it appears that he worked for the company until January of

1956 and then it was crossed out, which indicates he was no longer there. Then in January, 1957 you have a date January 14th, with a starting salary of $2.

That would indicate to me that he returned to the employ of the company on January 14th, 1957. Is that accurate? A. The first part of your statement is not accurate. You said he stayed until January of 1956. I don't know whether he stayed until January, February or March of 1956. I know DeMartino did leave to go into some business for himself—I think it was automobile repair, as I recall—and he did return after approximately a year or less than a year. Whether January 14th represents his starting date, I cannot accurately tell you from this sheet. It seems he was around some time in January, 1957.

This just bears out what I told you before: Usually [501] when a line is drawn through, the man is gone. The line stops at April of 1956 and then it is picked up again without a line.

Q. In the event there are other employees where the same thing happened, it would be indicated that way? A. Yes. As I recall, probably DeMartino was the only one in that case.

Q. The other thing I want to ask you about is starting dates. Look at your small sheet. You will note that until J. Leonard—starting from Ackerman down, except for Schmidt and some others on the bottom, there are no starting dates. Some of these individuals it is difficult to tell exactly when they started for the company.

Would you have any knowledge at this time as to the starting dates? A. No. They should have been shown on the sheet.

Mr. Weissman: Mr. Examiner, this might be of some importance, the starting dates.

Mr. Raphael: How is that important? I don't follow that.

Mr. Weissman: It is important.

Mr. Raphael: Would you enlighten me, please? Whether a man started January, 1957 or November of 1956, how would that be important in the light of our company's history?

Mr. Weissman: In this respect: That there may be [502] employees who were working for the company under three months, let us say, or two months, who might or might not get an increase at a certain date.

If all the starting dates were listed here, then a pattern might arise; but the starting dates are not all here, so you cannot tell in a particular month if there is a pattern.

Trial Examiner: The witness says he cannot testify as to the starting dates, so there is nothing I can do right now.

Mr. Raphael: I frankly don't think it makes much difference.

Q. (By Mr. Weissman) With respect to the small sheet, is it your testimony that line five, that you don't know whether that represents July or August? A. Column five, you mean?

Q. Yes. A. I couldn't tell you accurately whether it is July or August.

Mr. Weissman: I have no further questions with respect to the documents at this time.

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[504] J. LAWRENCE RAIMIST was re-called as a witness by and on behalf of the General Counsel, and having been previously duly sworn, was examined and testified further as follows.

Further Direct Examination:

Q. (By Mr. Weissman) Mr. Raimist, my recollection of the direct examination is that I asked you whether at the time the employer, Mr. Finkel, came to you and told you that the respondent was going to put into effect changes in wages or in sick leave or in any other working condition—

Mr. Raphael: What page of the transcript is that? Would you read that question?

(Question read.)

Mr. Raphael: The testimony I got is Pages 76 to 79 of the transcript, so far. According to that testimony, he stated—Pages 76 to 79—at the meeting of April 11th he [505] said he made certain accusations that were levelled at Mr. Finkel.

Mr. Weissman: I found it. It is on Page 85.

I would like to withdraw the previous question.

Q. (By Mr. Weissman) Mr. Raimist, in your direct testimony, I asked you: "Did any representative of the respondent ever tell you that they intended to give out merit increases?" and you stated, "No."

Then I asked, "Did any representative of the respondent ever talk to you and tell you that they intended to give wage increases?" and you answered, "No."

Then I asked: "Did anyone from the respondent ever come to you and talk to you and tell you that they intended to make changes in sick leave at the respondent's com-

pany?" and you answered: "No. If they had I wouldn't have sent these letters."

And then Mr. Raphael said, "I will move to strike that out as irresponsive."

And the Examiner said, "It may be stricken."

With respect to the third question: "Did anyone from the respondent ever come to you and talk to you and tell you that they intended to make changes in sick leave at the respondent's company," what is your answer to that? A. My answer is no.

Mr. Raphael: Before you answer—

[506] Trial Examiner: The answer may be stricken so that counsel may make an objection.

Mr. Raphael: In the first place, I object because this is improper redirect unless an application is made to reopen this man's testimony, which comes at a rather late date. It is easy to formulate a different question and a different answer, and I don't think a motion like that should be granted.

In the second place, I object to the form of the question because it presupposes that changes in sick leave were made. You ask a man a categorical question, "Did someone come to you and talk to you that changes were made in sick leave?" There is no point about that in this man's testimony, and to come in with a categorical, empirical all-embracing question amounts to a summation to a jury.

I object to the form of the question and its propriety at this time in the trial.

Mr. Weissman: During this man's testimony on direct there were letters introduced with respect to sick leave changes.

Mr. Raphael: They speak for themselves.

Mr. Weissman: When I asked this question previously, I note that you granted the motion to strike it out as irresponsive.

Trial Examiner: Read the answer.

[507] Mr. Weissman: The answer is: "No. If they had I wouldn't have sent those letters.

"Mr. Raphael: I will move to strike that out.

"Trial Examiner: That may be stricken."

Trial Examiner: Everything but "No" would be stricken. The direct answer "No" should stand.

Mr. Raphael: The form of the question is bad. You ask a man, "Did somebody ever come to you and talk to you that they intended to make changes in sick leave." We have no evidence that changes were in fact made.

Trial Examiner: The objection is overruled. You may answer.

Mr. Weissman: Does this stand as "no"?

Trial Examiner: Yes.

Mr. Weissman: Then I don't want to ask that question.

I will stand on that.

Mr. Raphael: As long as the direct examination has been reopened at the request of counsel, I will ask for the reopening of cross examination.

Mr. Weissman: That is not in order, in my opinion.

Trial Examiner: Let me hear what the questions are.

Mr. Raphael: I have a few questions.

J. L. Raimist, re-called for General Counsel, Cross.

FURTHER CROSS EXAMINATION:

Q. (By Mr. Raphael) You testified, in response to examination here asked of you by counsel on Page 86, as follows:

[508] "Question: Mr. Raimist, subsequent to May 13th, 1957 do you recall making a written request for individual bargaining with respect to Williamsburg Steel Products Company?

"Answer: Yes.

"Question: I show you General Counsel's Exhibit 29 for identification and ask you whether this is the letter you sent to the respondent making such request.

"Answer: Yes."

I asked you about a certain response and you testified you didn't receive it.

Now, after you say you sent a letter, which is Respondent's Exhibit 29—I mean General Counsel's Exhibit 28—did you ever write any further letters to Williamsburg Steel about bargaining or bargaining negotiations for a collective agreement? A. I would like to see the exhibit to refresh my memory.

Mr. Weissman: Mr. Examiner, I will renew my objections to the cross examination of this witness at this time.

I put this witness on the stand for a specific purpose of straightening out one thing in the record. It is my recollection that he never answered the question.

Trial Examiner: But you asked him questions that should have been asked on direct examination

and I am liberal as to having people recall witnesses if it will be helpful.

Your objection is overruled.

[509] Q. (By Mr. Raphael) After this letter which was offered here as General Counsel's 28, did you send any additional letters (handing document to the witness)? A. I am trying to place in my mind—I know there was some communication. I believe it involved a telegram. I am trying to place in my mind whether it was sent before this or after this May 17th date. I am inclined to think at the moment, to the best of my recollection, that it might have been after this. I may be wrong.

Q. Are you referring to the telegram that was sent? We have a letter from you dated April 22nd, but that would be something else.

Mr. Weissman: Mr. Examiner, if Mr. Raphael has a writing, why doesn't he show it to the witness?

Mr. Raphael: I wish you would stop presuming what I have in my folder. I don't have anything in my folder. I am trying to find out what you have in your folder.

Trial Examiner: Proceed.

Do you recall having written a letter after that? A. At the moment, I am not positive of either a letter or telegram and I don't recall whether it was before or after. The letter you refer to of April 22nd, that referred to what happened on April 19th.

Q. That's the telegram of April 19th, which is in evidence in this case.

[510] Trial Examiner: Respondent's 5.

The Witness: And also the incident that happened on that date. The incident of Mr. Halpern

bawling out the eleven men in the detailing department.

Q. (By Mr. Raphael) The telegram that you are referring to is a telegram that you sent, which is Respondent's 5. You did write a letter thereafter—we have that letter—on April 22nd. A. That is not the telegram I referred to. Maybe I sent another telegram. My memory is vague at this point.

Q. Did you give to the General Counsel all the papers that you have pertaining to this case? A. I did.

Mr. Raphael: Where is that exhibit with the long statement that was made here, by Mr. Raimist?

Mr. Weissman: That exhibit was returned to the Board files.

Mr. Raphael: Is it marked for identification?

Mr. Weissman: No.

Mr. Raphael: May I see that? I saw the witness looking at it this morning.

Mr. Weissman: Not mine.

Does the Trial Examiner wish that I do this?

Trial Examiner: Yes. If the witness gave a statement to General Counsel, respondent is entitled to see it.

[511] (Mr. Weissman hands document to Mr. Raphael.)

Q. (By Mr. Raphael) You testified earlier in the case that you gave, for the purposes of the preparation of the processing of the charge in the hearing, a statement which you prepared which was marked here as Respondent's 4 for identification. You recall this? A. Yes.

Q. I will ask you to look at May 17th, 1957 and tell us whether that doesn't refresh your recollection that in fact you stated here, "Letter to Williamsburg Steel Products

Company referring to last New York State Board of Mediation conference, *et cetera*, and *re:* Williamsburg Steel Products Company reply and attitude."

Did you receive a reply to this letter? Am I to infer that from a reading of this thing? A. There must be some kind of reply. It may not have been in writing; I don't know. If I have that reply, it would be one of the exhibits which I submitted, if it was a written reply.

Q. You are not sure? A. No, sir.

Q. Will you keep looking after May 17th and see whether you have any indication which would indicate that after May 17th, 1957, when you testified you wrote this letter, General Counsel's 28, whether after that date there is any indication [512] that you wrote any other letters to the company or its counsel asking for further negotiations? A. I will say no.

Q. Is there any indication in that Respondent's 4 for identification which would tend to refresh your recollection that after May 17th, 1957, that you contacted anybody in the Williamsburg Steel Products Company and asked them specifically to continue any negotiations? A. It is not contained in here, but I did speak to you as their attorney.

Q. Is it contained in that paper? A. No.

Q. Did you make any record of any time or place that you spoke to me as the attorney for Williamsburg Steel after May 17th about negotiations? Is it in that paper? A. It is not in this paper.

Q. Can you tell us the time and place when you had such conversations with me? A. It would be difficult because I talked to you at least twenty-five or thirty times about it. That is, after May 17th.

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[514] WESNER VAVAL called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please give your full name to the reporter.

The Witness: Wesner Vaval.

Trial Examiner: What is your address?

The Witness: 2508 Broadway, New York City.

DIRECT EXAMINATION:

Q. (By Mr. Weissman) Were you ever employed by the Williamsburg Steel Products Company? A. Yes, sir.

Q. Could you tell us the approximate dates of your employment with that company? A. It was about April 14th, 1956 to June, 1958.

Q. While you were with this company, what kind of work did you do? A. Listing.

[515] Q. Who was your immediate supervisor? A. Pete Manzuk.

Q. Do you recall approximately July of 1957 attending a meeting of employees on the company premises? A. Yes, sir.

Q. Could you tell us where this meeting was held? A. In the drafting room.

Q. Could you tell us approximately what time the meeting started? A. It was about four o'clock.

Q. Did it start at about the time of the coffee break? A. Yes, sir.

Q. Could you tell us for about how long the meeting lasted? A. About two hours, I would say.

Q. Could you tell us approximately how many employees were present at that time? A. Maybe twenty-five, or something like that. I am not too sure.

Q. Do you recall whether you punched out before or after the meeting? A. After the meeting.

Q. Just tell us in you own words what happened at the meeting. Start from the beginning and go through. A. We were asked to go to the drafting room, everybody. So we went there and a few moments after, Mr. Jacobson, Sid Appel [516] and Al Furst come in the room.

Herbie had the papers in his hands, so he told us, half smiling, that he just found it on the floor, that he didn't know where it comes from but he was going to read it for us anyway.

When he read it, it was a contract for a separate association.

Q. Proceed. A. He read the contract and after that this contract was discussed and explained by Sid Appel, Herb Jacobson, himself, and Al Furst said a few words, but he didn't say too much about explaining the contract.

After that they showed us the advantage of having this contract with the association than having the union, and after that it went to a vote.

Q. Do you recall what occurred then, after the vote? A. After the vote they asked us to sign a letter—was it a letter? I'm sorry. Before the vote we had agreed that everybody would stick with the majority. Then after that we had to sign the paper; we signed the paper except one guy who left before. His name was Harry McCain.

Q. On the same day that the meeting was held, did you have a conversation with Ernst Halpern? A. Yes, sir.

Q. Could you tell us about what time that conversation was [517] held? A. It was between 10:30 and eleven o'clock.

Q. Tell us exactly how the conversation started. A.

I was working in the listing room and Ernie Halpern called me. He took me to his second office, because he has a private office but there is another one where he sits and phones. He took me to an office with a window leading on the street and he told me that—I know already that there was a meeting and at this meeting there would be a vote for or against the union; that if I accepted to vote against the union I would have a five-dollar raise and three months later that I would have a five-dollar raise under the table.

At that time I answered him that I was not to sell.

Q. Are you sure he used the words "under the table"? A. I am positive.

Q. Will you tell us again exactly where you were standing with Mr. Halpern when this discussion occurred? A. It was near the window at the corner. The window gives on the street. He took me to this corner (indicating) and that's where he talked to me.

Q. Were there any other people present at the time? A. Yes.

Q. How far away were they from where you were standing? A. I would say thirteen or fifteen feet.

Q. Could you show us here approximately the distance? [518] A. From here (indicating) to where the gentleman is sitting over there at the end of the table (indicating).

Mr. Weissman: Can we agree that this is roughly about thirteen or fourteen feet?

Trial Examiner: It looks like that distance to me.

Q. (By Mr. Weissman) Did you receive an increase in August of 1957, if you know? A. In August, 1957? Yes, sir.

Q. One other thing: When you answered Mr. Halpern, did he have anything further to say? A. Yes. He said to me how silly I was by my position in sticking with the union, that the union wouldn't do nothing good for me.

Q. Incidentally, what is your nationality, Mr. Vaval? A. I am from Haiti.

Q. What is your native tongue? A. French.

Q. How long have you been in this country? A. Five years.

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[590] **Stenographic Transcript of Testimony at Hearing of February 5, 1959.**

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[591] **PROCEEDINGS.**

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[624] **ALFRED FINKEL**, called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please state your full name and address for the record.

The Witness: Alfred Finkel, 59 Paidge, Brooklyn 22, New York.

DIRECT EXAMINATION:

Q. (By Mr. Raphael) Mr. Finkel, you are one of the partners of Williamsberg Steel Products Company and

are one of the respondents in this proceeding? A. I am.

Q. I believe you have testified to your duties with the company. I won't go over that.

Some time in September of 1957 did you, at the request of Mr. Levy of the National Labor Relations Board, Sidney Levy, give him a statement concerning certain facts and circumstances pertaining to this case? A. I did.

Q. Did he interview you at that time? A. Yes, he did.

Q. For how long a period of time? A. Several hours.

[625] Q. Was that on the same day he interviewed other people up at Williamsburg Steel? A. I doubt it very much, because as I recall, I took up most of his day.

Q. And thereafter he took other statements? A. Yes; I think on subsequent days.

Q. At or about the time that you gave your statement? A. It was about the early part of September of 1957.

Q. Did Mr. Levy ask you to sign that statement, if you recall? A. I believe he did.

Q. To the best of your recollection, did you? A. I think I did.

Q. You are familiar with the background of the negotiations with Local 66 and with the events that transpired with Local 66 before their certification by the National Labor Relations Board? A. I am.

Q. Is it a fair statement that you were the partner to whom was delegated that job of handling those matters? A. Yes, sir.

Q. As you sit here and testify today, I will ask you certain questions. If it is possible for you to testify as to them from recollection, well and good. If on the other hand you find that you are not able to do so and you wish to [626] refresh your recollection, please indicate that. So if

you have any documents here you want to look at to help you do so, it will help us all to expedite this proceeding.

As near as you can recall, when did you have your first contract with Local 66, or anybody connected with Local 66, pertaining to your technical employees working at Williamsburg Steel? A. I think that the best thing for me, rather than try to give you my recollection on things, is, I have actual letters I received from Local 66 and actual notes I kept, and I give you specifics by referring to my notes.

Q. Would that help you refresh your recollection? A. Yes. The answer may be March or April of 1956, but I would not be sure. If I am permitted to refer to my notes, I can tell you exactly.

Q. Go right ahead.

Mr. Weissman: Mr. Examiner, before the witness refers to his notes, I would like him to answer from his memory and see whether he has any recollection.

The Witness: Yes, I do have a recollection. I have a recollection that it was in March or April of 1956, somewhere around that time.

Q. (By Mr. Raphael) Can you pinpoint that?

Mr. Weissman: I object to the question because I don't think it is material to the issues before us.

[627] Trial Examiner: March, 1956?

Mr. Weissman: Yes.

Trial Examiner: He may answer.

The Witness: The first time I heard from him was a letter received March 23rd, 1956, on a letter written by Mr. Raimist on March 21, 1956.

Mr. Weissman: I renew my objection. There has been a certification introduced into evidence, a consent agreement introduced in evidence. As I recall your ruling, you ruled against any other conversations that occurred about that time.

Trial Examiner: I am not going to allow him to go into an extended discussion as to what took place prior to that time. I think a certain amount of preliminary evidence is admissible.

Q. (By Mr. Raphael) You say you received a letter? A. Yes, I did.

Q. From Local 66? A. That is correct.

Q. At some subsequent time you received a petition for certification; is that right? A. Yes, I did.

Q. At some time prior to the actual election, which was held, I believe, in July of 1956, did you have a meeting with Mr. Raimist? [628] A. The actual date of the election was June 26th, 1956. The certification was on July 5, 1956. Prior to that I did have a meeting.

Q. Do you have the date of that meeting? A. June 4, 1956.

Q. Were you the only one present at that meeting with Mr. Raimist? A. No.

Q. Who else was there?

Mr. Weissman: Mr. Examiner, this was the exact question which I asked Mr. Raimist and which you sustained to.

Mr. Raphael: I am not asking for any conversations. I just want to know who was there, because this leads in with subsequent questions that come later on.

Trial Examiner: He may answer.

A. At the June 4th, 1956 meeting, there were present Mr. Raimist; a draftsman from American Steel Door; two draftsmen from Aetna Steel Door; Mr. Henry Carr of Aetna Steel, who is a principal; Mr. Sam Sheer of City Steel Door; Mr. Sidney Raphael; Mr. Sam Mittleman of World; Mr. Irving Shaffer of Superior; Alfred Finkel of Williamsburg; Herman Sears of Triangle; and Abby Ross of American Steel Buck.

Q. That meeting was held at my office; is that right A. That is correct.

[629] Q. Then there was an election; is that right? A. No. Then there was another meeting.

Q. What was the date of the next meeting? A. On June 12th, 1956.

Q. Was that with Mr. Raimist? A. Mr. Raimist was present, yes.

Q. Don't tell us what was said. Just tell us who was there. A. Mr. Sears of Triangle; Mr. Sheer of City; Mr. Raphael; Mr. Finkel; Mr. Carr of Aetna; Mr. Mittleman of World; Mr. Shaffer of Superior; Mr. Graine of Pioneer; two Aetna representatives; one representative from Superior.

Q. What do you mean by "two Aetna representatives"? Employees? A. I suppose employees; steering committee. I know they were the representatives from Aetna. I always ask who is present.

Mr. Raimist; and also a man from Philadelphia, Local 66.

Q. Do you have his name? A. I don't have his name. I asked who he was and I was told he was a man from Local 66, Philadelphia.

Q. Were there any other meetings before the election with Mr. Raimist? A. I don't think so.

Mr. Weissman: Mr. Examiner, if the witness is going to refer to documents, I want them identified, and I would like [630] to look at them.

Trial Examiner: I think you are entitled to do so.

Mr. Raphael: Go ahead. Look at them. We have nothing to hide. You don't let us see statements, but we will let you see everything we got in our folder.

Trial Examiner: I think you are stretching the facts a little bit, Mr. Raphael. Any documents that were used by any witnesses to refresh their recollection, you were given the right to examine.

Mr. Newmark: Only portions.

Mr. Raphael: Only portions.

Mr. Newmark: He wouldn't let him look at the whole document.

Mr. Weissman: That is not true.

Mr. Raphael: I don't want to get into a harangue with you.

Trial Examiner: Proceed.

Q. (By Mr. Raphael) You had no other meetings until after the election; is that right? A. That's right.

Q. Did you have any meetings after the election and certification of Local 66? A. We did.

Q. When was the first meeting? A. I believe it was August 30, 1956.

[631] Q. If you will, please tell us who was present, where the meeting was held, how long it took, who were

the participants, and what was said by those who were there, as near as you can remember.

Trial Examiner: What date was that?

The Witness: August 30th.

It was held August 30th, at the office of Mr. Raphael, at two p. m.

Mr. Weissman: Before the witness answers, can we determine what he is reading from?

The Witness: This is a copy of the notes taken at that meeting. "Minutes of Meeting, *re* Hollow Metal Door and Buck Associates, Local 66, Architects Engineers Union, held on August 30, 1956."

Mr. Raphael: By the way, let the record show we gave copies of these minutes to the Board. Mr. Levy asked for it and we gave it to him.

Mr. Weissman: At this point I would like this identified.

Mr. Raphael: You have a copy. We gave it to you.

Mr. Weissman: Why don't you put a number on it, Mr. Raphael?

Mr. Raphael: I don't care. Take it out and we will put a number on it. But you have a copy.

The Witness: You asked who else was present at the [632] meeting?

Q. (By Mr. Raphael) I asked you an all-embracing question. I am going to do that with all the meetings so I don't have to ask you a million questions. You give us one categorical and empirical answer.

Tell us who was there, how long the meeting took, what was said, and so on and so forth.

Mr. Weissman: Has a number been given?

Trial Examiner: Not so far.

Mr. Raphael: Mr. Finkel, please come down and ask the stenographer to mark it with an identification number, so we don't have any problems.

(The document above referred to was marked as General Counsel's Exhibit No. 40 for identification.)

Mr. Weissman: Is it my understanding that Mr. Raphael is not marking this as the Respondent's exhibit but as General Counsel's exhibit?

Mr. Raphael: You asked for it to be marked.

Mr. Weissman: I think it is proper procedure in any case for the party using the exhibit to offer it.

Mr. Raphael: Based on standard procedures, where an exhibit is requested for marking purposes for identification, it is my recollection and knowledge that the one who asks that it be marked for identification be charged to that party. [633] I don't care if it isn't marked.

Mr. Weissman: You requested exhibits—

Mr. Raphael: Don't argue with me. Argue with the Trial Examiner.

Trial Examiner: You have asked that it be identified. I think it should be marked for identification purposes as your exhibit.

Mr. Weissman: Mr. Examiner, Mr. Raphael requested that many exhibits be marked for identification and they were exhibits that we were using and we marked them as General Counsel's exhibits.

Now Mr. Raphael takes the other viewpoint, that

if I ask for it with respect to his documents, they become General Counsel's exhibits, also.

Mr. Raphael: I cannot go into the past history of this case.

Trial Examiner: They are not being offered by the respondent and they are not being offered by you at this time. You asked that they be identified so that the record will show what the witness is referring to. I think for identification purposes it should be identified as your exhibit.

Mr. Weissman: Can I have the witness on *voir dire* for a moment?

Trial Examiner: It hasn't been offered in evidence yet.

Mr. Raphael: There is no *voir dire* necessary.

[634] Trial Examiner: I don't know whether it will be offered in evidence. Perhaps it won't be.

Mr. Raphael: It won't be offered by us. I have no reason to offer it.

Trial Examiner: All right. It has been marked as General Counsel's Exhibit 40.

Q. (By Mr. Raphael) Answer the question. A. Present on behalf of the union were Mr. Raimist and three of his committee members; on behalf of the association were myself, Mittleman and Mr. Raphael; Messrs. Sears and Graine weren't able to be present and they had called that they couldn't be there.

Then it was announced at the outset of the meeting that this would be a meeting with the subcommittee of the respective groups that would take up the matter of a contract on an industry-wide basis with the association represent-

ing its component members and the union representing all persons employed in those shops with the bargaining units.

The union made it clear that as far as wages were concerned they were going to proceed on a shop-to-shop basis for the first year, and all other problems would be treated on an industry-wide basis.

Mr. Weissman: Mr. Examiner, the witness is simply reading verbatim from what he is looking at.

The Witness: I am not.

[635] Mr. Weissman: If he wishes to refresh his recollection, let him refresh his recollection and testify independently.

Mr. Raphael: Counsel makes an observation, not an objection, that the witness is reading verbatim. That is not the fact.

How do you know that?

Trial Examiner: Proceed. If you feel there is something objectionable, make your objection. At this point I see nothing irregular. I don't know whether he is reading verbatim or not.

The Witness: I am just using it as a basis.

Trial Examiner: That is what you were instructed to do. You were instructed to use this to refresh your recollection.

Mr. Raphael: That is right. This is not a prepared statement.

Trial Examiner: Do you have a copy of that statement?

Mr. Raphael: We have given it to Mr. Levy.

The Witness: It was mailed to him.

Mr. Weissman: I have it.

The Witness: It was sent to Mr. Levy on September 5, 1957. He has a complete copy.

Q. (By Mr. Raphael) In other words, on September 5, 1957, at Mr. Levy's request, you gave him copies of all the minutes of these meetings? A. I called you and you told me to give it to him. Yes.

[636] Mr. Weissman: This is being characterized as minutes of meetings. If there is a characterization of what this represents, there has been no testimony that these are minutes of meetings. There has been no testimony of who has drawn this up.

Trial Examiner: As I say, that exhibit is not in evidence. He has referred to it as minutes of the meeting. You have a copy of it. It has been identified in the record. You may examine him on cross examination later on as to the true nature of the exhibit.

Proceed.

The Witness: We then decided to take each item listed in Mr. Raimist's demands, which was dated July 19, 1956, and start discussing item for item in order to come to some sort of understanding about each particular item, and that is the manner that we proceeded in. Some items we didn't see eye to eye on; some we did. Some we said we would hold in abeyance, and we went on right down the whole agenda.

The meeting lasted a good part of the afternoon, to probably around six o'clock, as I recall.

If you want me to talk specifically of each item—

Q. (By Mr. Raphael) Give us your best recollection of

what was generally the discussion. A. The first item on Mr. Raimist's July 19th agenda was the recognition clause.

[637] Mr. Weissman: At this time I object and ask that it be stricken from the record. There has been no direct testimony with respect to recognition clauses. I think that this testimony is not material.

Trial Examiner: He is on direct examination now.

Mr. Newmark: This is new matter.

Mr. Weissman: The General Counsel did not go into the matter of recognition.

Mr. Raphael: You produced the July 19th letter with demands. It is in evidence. It is Exhibit No. 10.

Trial Examiner: Objection overruled.

The Witness: The first item, Item A, in Mr. Raimist's July 19th, 1956 letter was the recognition clause. This item we agreed that we would recognize the local after we arrived at a basis for the contract.

Trial Examiner: I wonder if we can't shorten the record here. I am throwing this out as a suggestion; I am not asking that you do it, but I want you to consider it.

In view of the fact that he has what you call minutes of those meetings, I think it is a fair assumption that his testimony will probably follow along the lines of those notes or minutes, or whatever he calls them.

Mr. Raphael: That is right.

The Witness: Yes.

Trial Examiner: First, would you consider

offering those [638] minutes in evidence in lieu of his testimony as to what took place at those meetings?

Mr. Raphael: I would be perfectly agreeable.

Trial Examiner: In other words, not necessarily as binding on the union or binding on the General Counsel, but merely a summary of what this witness's testimony would be as to what took place at those meetings.

Then the General Counsel will have an opportunity to examine those statements and to cross examine the witness on the statements rather than on the testimony, which I would consider to be in lieu of his testimony, if that is agreeable to all of you gentlemen.

Mr. Raphael: It sounds all right to me. It is an abbreviation of things.

Mr. Weissman: The only thing that I have to say is that Mr. Raimist's minutes should go in in the same way. Otherwise I don't see the fairness of the arrangement.

The Witness: Can I make one clarification?

Trial Examiner: Yes.

The Witness: This was the first meeting after the certification in which I have minutes as detailed as this. The rest were handwritten by myself, which would not go into as great a detail as we did at the first one. The first one was the longest one, really.

Mr. Raphael: Why don't you take the first one?

[639] Trial Examiner: How long are those first typewritten notes?

The Witness: Four pages.

Mr. Raphael: It is quite lengthy.

Mr. Weissman: Mr. Examiner, with respect to Mr. Raimist's notes, I think if we are going to put in Mr. Finkel's, we should put in Mr. Raimist's.

Mr. Raphael: This is one set of minutes. If you want to start making deals, I am not going to do that.

Mr. Raimist: These are official minutes.

Mr. Raphael: You are not bound by them.

Mr. Weissman: May I have a one-minute recess?

Trial Examiner: Yes.

(Recess taken.)

Trial Examiner: On the record.

Is the suggestion agreeable or not?

Mr. Weissman: With respect to the first meeting?

Trial Examiner: Yes.

Mr. Weissman: No; unless Mr. Raimist's go in in the same way.

Mr. Raphael: Let's go.

Trial Examiner: Continue.

The Witness: We discussed, as I mentioned before, the recognition clause, which is Item A in the July 19th letter of Local 66.

[640] Q. (By Mr. Raphael) Review the items briefly. Don't go into long details. A. We then discussed the union shop. We then discussed the union seal on the drawing. We agreed to agree to that, except there are questions, I recall, clearly about out-of-town people down south who may have some objections to seeing a union seal on drawings. We discussed that.

Item D, which was the question of the hours, we agreed to a forty-hour week and eight-hour work day, time and-a-half for eight hours, and of course for forty hours, double time for holidays; twice the amount of straight time for holidays, not three times.

Items E, F and G, actually the big problem was job classifications, and also just exactly what we were talking about. This is job classification, minimum rates and merit increase provisions. We decided to hold that in abeyance and discuss it at future meetings.

Item H, which was holidays, the union demanded eleven and the employer group offered five. There was no agreement on this matter and we tabled it.

Item I, which was vacations, the union asked for a working day per month, a maximum accumulation of ten working days per year, an increase to fifteen working days per year after five years of servier after July 1st of each year, and the employers association offered one week for one year, two [641] weeks for two years. The union was not in agreement with this, so we decided to hold this over for a future meeting.

Mr. Weissman: Mr. Examiner, with respect to testimony on August 30th, 1956, I would like to have an opportunity to look through this document and also Mr. Raimist's minutes of August 30th.

Mr. Raphael: No. I am going to go ahead with this. I am not going to make any trades with you. I don't want to trade with you. I just answered the proposal of the Trial Examiner.

Go ahead with your testimony.

The Witness: We decided as far as vacations we would hold that in abeyance for future meetings.

The seniority we skipped over because we felt that was something we would have to go into in great detail. As time proved, that certainly was an important item.

As to the promotional clause, we decided to move that somehow in with the classification and the merit review in Items F F and G.

There was discharge for just cause. We accepted the general idea of the union's proposal that there would be no discharge without any just cause. That was generally accepted.

Then there was the question of sick leave, which is Item M. The union asked for one day sick leave for each [642] day of the month of employment, maximum accumulation of thirty days at any one time. We agreed in principle as to sick leave, but the details we said we would work out in the future, as to the formula and amount of time. That would be left open. We agreed on the question of sick leave, but not the details of it.

Q. (By Mr. Raphael) The testimony given by Mr. Raimist on Page 32, I believe, of the transcript on his direct examination said that you proposed at that meeting one day per year sick leave with a maximum accumulation of twenty days after twenty years. A. That was never proposed at any meeting.

Q. Go on with what happened. A. Can I explain why I am so definite about that?

Q. Why are you? A. I am so positive about that because the sick leave was a question of talking by all the members of the association. There were very few people

who had any sort of accumulation plan. I was one of the very few who had an accumulation plan and I was definitely held back because of that, because they decided to offer at the beginning the minimum, and mine being the maximum, it could never have been offered at any meeting, because none of the other people had an accumulation plan and they didn't want to go along with that. That is why I am so positive there was never any such plan, especially [643] a twenty-day accumulation.

I heard that when Mr. Raimist said that, and I knew that that just wasn't so. Certainly not at this meeting nor at any other meeting.

Then we came to the question of bulletin boards, Item N. We agreed on the bulletin boards, if there were no controversial matters on the board.

Item O, severance pay and notice of lay-offs, which would be, of course, Item J in our minutes. We didn't go along with the severance pay, but we agreed to a formula that a notice of lay-offs would be given and that each man would have a sufficient number of days to enable the employer to make suitable arrangements for other employment. The idea and the principle was generally agreed on, but the mechanics we didn't work out.

Item P, which is pension plan, we flatly refused to go along with that.

Item Q was the welfare plan. We refused at this time to go along with that, also.

Item R, shop stewards and committee performing duties at company plant during working hours to suffer no loss of pay, we agreed to the general principles of shop stewardship, provided that they were reasonably exercised and

they wouldn't disrupt or spend too much time on their matters and try to take care of their matters as quickly and efficiently as [644] possible.

Then there is T, grievance procedure.

Q. Is there anything on dues collection? A. Yes. We agreed that he could collect dues, provided that they would do it at a specific time and at a specific place each week and not do it daily, constantly, all the time. We did agree to the collection of dues on the premises on company time.

That is Item S. I am sorry. That was Item S, as far as the shop steward being permitted to collect dues once every two weeks. We agreed on that.

Item T is grievance procedure. That was generally agreed to. The details and the working formula would be worked out in the future.

Item U was arbitration, also to be worked out in the future. It was generally agreed to, but the details were to be worked out in the future.

V, leaves of absence for union business or personal reasons. I don't know if there was much discussion on that. We probably just passed it over. There was no negative reaction, as far as we were concerned, on that.

W, conflict with statutes clause. This matter was agreed on. You see, we did not know what that was. It was explained that the purpose of the clause was to prevent the complete nullification of the agreement in case there was one [645] clause in the agreement that would be illegal. We agreed that if such was the case, we would just remove that clause and the rest of the agreement would stay intact. Actually, we agreed on that.

X, no strike, no lock-out, no lawsuit clause. We pointed

out that the general proposition of no lausuit was a little too broad, as far as the union was concerned, that they could not be sued for any damages by the association for any breach of contract.

Mr. Raphael pointed out that we would go along with a certain amount of reasonable restrictions on that. This was an item handled by Mr. Raphael, as far as the lawsuits were concerned.

It was pointed out at that time that the union would be given a certain amount of clearance, in case there was a wildcat strike or unauthorized strike, that the union would be given a chance to get the men back to work.

It was explained that apart from these particular conditions, if the union counselled a strike or condoned it or allowed it in any way, or there was any violation of the agreement with full cognizance, that would be a different matter and we would not go along and relieve the union of the responsibility.

I think that was all that we discussed at that meeting. We did not go into any of the notes on this.

[646] Trial Examiner: What do you mean by that?

The Witness: There was some note in his July 19th letter. He has General Notes 1, 2, 3, 4, 5, 6. We did not discuss the General Notes at that time. We agreed that we would meet again in a few weeks.

In the meanwhile, the union had requested that we submit a list of names and classifications and rates of pay of all the people in the unit. Mr. Raphael had asked us that we send this in.

Trial Examiner: Was a definite date agreed upon for the next meeting?

The Witness: No. We said we would meet. We had accomplished a tremendous amount of—I just gave it to you in a few minutes, but it really took until 6 or 6:30. We wanted to rehash everything and start preparing for the next meeting and the next bargaining session and be prepared to give more or take more.

Q. (By Mr. Raphael) Mr. Finkel, during the course of Mr. Raimist's direct testimony on Page 31 of the transcript, Mr. Raimist testified that at this August 30th meeting there was a definite agreement that on the matter of merit reviews it would be done jointly.

Do you have any recollection of that being agreed to? A. No. We didn't have any agreement on that. That was all pushed in advance. I think it was E, F and G. As far as [647] merit, classification and wage increases, that was all pushed aside for future meetings. We felt we would stop right there and never complete anything for the rest of the meeting.

Q. As to the October 2nd meeting, do you remember that meeting with Mr. Raimist? A. Yes, I do.

Q. Do you have any notes there which would help to refresh your recollection? A. Yes, I do.

Q. They are not typewritten notes, are they? A. No. They are in my own personal handwriting.

Q. Were they made at the time of the meeting? A. They were made during the meeting.

Q. Did you at any time tell Mr. Levy that you had those notes of that meeting, October 2rd? A. I probably did. I would have to tell it to him in order to give him the complete picture of this.

Q. Can you tell us what happened at that meeting of October 2nd? Where was the meeting held and at whose office?

Mr. Weissman: May I have an opportunity to look at the notes?

Trial Examiner: Yes.

The Witness: This was a letter—

Mr. Weissman: I would just like to look at it.

[648] Mr. Newmark: He is looking at your notes of October 2nd.

(Short pause.)

A. The meeting was called by Mr. Raphael, to be held on October 2nd, at one p. m., at his office. Present were Mr. Raimist; The World Union representative; Mr. Appel, who was the Williamsburg union representative—

Q. Is that Sid Appel? A. Yes. I don't know if I got the right nomenclature of these various people, but as far as I was concerned they were described as the union representative.

Q. Raimist was sitting there? A. That's right. Then the Aetna Steel employee representative; Mr. Graine of the Pioneer; Mr. Raphael; myself representing Williamsburg; Mr. Sheer representing City; Mr. Mittleman representing World; and the Pioneer shop representative, also.

Mr. Weissman: I was confused by that answer. Was there a representative there from Aetna?

The Witness: Yes.

Mr. Weissman: Of the employees or of management?

The Witness: Of the employees. In fact, I even got he was referred to as "Sam." I even got his first name.

What we did at this meeting was to again start with Mr. Raimist's July 19th letter and start going down and clarifying and solidifying each position in order to work this thing [649] out. We said as far as "A" was concerned, I recorded it as definitely okay. That was completely agreed on.

Q. (By Mr. Raphael) What was "A"? A. "A" was the recognition clause.

As to "B", we still had to hold that in abeyance because we felt that Mr. Raimist didn't have an adequate supply of men to feed us, and therefore this question of the closed union shop, until we received assurance until he could constantly feed us with men—

Q. Is this the hiring provision? A. No. This is the union shop, Item "B". We left that in abeyance until we had an assurance that Mr. Raimist could supply us, because we were very dubious as to ability to keep feeding us with men. If we felt certain about it, then we would recognize it as we do with other unions, because they keep feeding us.

Q. What is the next thing? A. Item "C". We pointed out again the problem of the out-of-town contractors who would object to a union seal on drawings, particularly down south. They felt that some of these southern contractors might see a union seal on drawings and they would send it back, because some of the members of the association had that experience when we asked them if they were a union shop or not; not necessarily from the drafting room, but from downstairs.

[650] Item D, we agreed on a forty-hour week, eight-hour day, one and-a-half times for overtime and two and-a-half times for holidays and Sundays. We moved up a half-a-

time at this meeting. At the first meeting we just had agreed on double time for holidays and Sundays, and this time we upped it, probably after great discussion by Mr. Raimist, to two and-a-half times.

Mr. Weissman: I request the witness confine himself to the question, which is what occurred at this meeting, without going back to prior meetings or future meetings.

The Witness: We also agreed, which is something that Mr. Raimist demanded, to a minimum of a guarantee of four hours work on Saturdays, Sundays or holidays if a man is asked to come in to wor. This was an additional concession made on behalf of the employees as far as the minimum was concerned.

We felt it was a fair demand by Mr. Raimist because it would be not proper to have a man come in for an hour or two hours or three hours. We wouldn't have him come in for an hour or two hours or three hours. So the four hours we granted to Mr. Raimist.

Again, Items E, F and G, Raimist and Raphael were to work that out in the future. This was a question of job classifications, minimum rates, and merit increase provisions. This was still an item that we felt we better delay until a [651] future meeting.

Q. (By Mr. Raphael) While we are on that subject, Mr. Raimist in his testimony, at Page 35 of the transcript, testified, among other things, respecting the agenda of the meeting of October 2, that it was agreed at that meeting that the formula for merit increases would be worked out

whereby both parties would participate in the merit increases.

Was there any such agreement or was there ever any such understanding at that meeting? A. There never was.

Q. Continue with what else you have. A. It never was. We just lumped that E, F and G and just would work it out in the future. We would get bogged up with it at this stage.

Item H, holidays with pay. The union had asked for eleven and at the previous meeting we offered six. This time we offered one more holiday. We offered seven holidays. We had increased our offer from six to seven holidays.

Item I, which is the vacations, the association again offered one week, one year; two weeks, two years. Mr. Raimist demanded again the same provision as before, which was one day per month with an accumulation of ten working days per year and an increase to fifteen working days after five years. Actually, he wanted two weeks for the first year and we wanted one week for the first year.

[652] I think at this time we upped our offer of the one week, one year, to two weeks, two years, by offering the following: We said we would give one week for one year, two weeks for two years up to seven years. After the eighth year he would get eleven days pay; after the ninth year he would get twelve days pay; after the tenth year he would get thirteen days pay; after the eleventh year he would get fourteen days pay; after the twelfth year he would get fifteen days pay, which was the maximum as demanded by Mr. Raimist at the time. He got his fifteen days; it was just a question of how long the man had to wait to get it.

Q. In other words, your step-up was on a different basis? A. That's right. He had asked for fifteen days for five years, after five years, and we started from the eighth year on to the twelfth year.

Again seniority was pushed aside and no agreement was made. Promotion was pushed aside. In regard to E, F and G, the question of discharge for just cause was not agreed on. We said we would do it generally, but it wasn't nailed down exactly.

As to the question of sick leave, the offer was one day per year up to five years; two days, two years; three days, three years; four days, four years; five days, five years.

Severance pay, we said we would give a man adequate notice to find a job.

[653] Pension plan, no; welfare plan, no.

I am reading down again.

Item R, shop steward and committee performing duties at company plant to suffer no loss of pay. We agreed generally on that. The question was brought up that this would be covered in a grievance procedure that we would work out some time in the future.

Shop steward to collect dues, we had agreed on that.

The grievance procedure we were going to work out in the future between Mr. Raphael and Mr. Raimist.

The same thing with the arbitration.

Leaves of absence for union business we agreed on, and naturally it was upon our consent.

The conflict of statutes we discussed before at the other meeting.

No strike no lock-out, we had agreed to the no lawsuit, as discussed at the other meeting.

I don't want to keep repeating what took place.

Q. Don't repeat yourself.

Mr. Finkel, there was another meeting on October 10th with the union. Mr. Raimist testified about that. October 6th I think was a meeting of the employers themselves. A. That's right.

Q. Don't discuss what happened at that meeting because you are not permitted to.

[654] Between Ocober 2nd and October 10th, 1956, specifically on October 6th, the employers affected by these negotiations met by themselves? A. That is correct.

Q. And they discussed the matter of the demands, *et cetera?* A. That is correct.

Q. After that meeting the employers had among themselves on October 6th, there was a meeting with Mr. Raimist and his group on October 10th; is that correct? A. That is correct.

Q. Tell us what happened on October 10th at that meeting. A. The meeting was held at your office. Present were Mr. Raimist; the World union representative, Zem Osiniski; the Williamsburg union representative, Sid Appel; Pioneer union representative Bob Foley; the Triangle union representative Bob McCain; myself representing Williamsburg; Sam Mittleman representing World; Mr. Raphael representing the association.

At this meeting, having met on October 6th, we had combined our thinking and pooled our thinking as to a plan of offer. We tried to tender more, with the hope and expectation that we would have some sort of a meeting of the minds.

Mr. Weissman: The witness keeps characterizing what was done. He doesn't testify with respect to facts.

The Witness: This is exactly what was done. I was very, very vivid and very, very cognizant of what was taking place.

[655] I attended every meeting and I was present at every meeting. I know exactly what was taking place. I am certain about my facts and feelings on this.

Mr. Weissman: I would suggest the witness stick to the facts and not his feelings.

Trial Examiner: There is nothing for me to rule on at this time.

Go ahead.

The Witness: We again went through Mr. Raimist's list of demands of July 19th.

There was a question of the recognition, which we had okayed.

We again discussed the question of whether Mr. Raimist can supply us this adequate supply of men with regard to the union shop. We were concerned about that.

There was the question of the union seal and the problem about the out-of-town.

We kept going over this and avoiding the same problems with the hope that Mr. Raimist would see our point of view.

Mr. Weissman: I am going to object and ask that that be stricken from the record. The witness repeatedly does the same thing.

Trial Examiner: Give us the conversation as close as you can remember.

The Witness: The question of the union shop we brought [656] up again, whether Mr. Raimist could

give us an adequate supply of men. From what we had heard, he was in no position to give us—to feed our demands, as other unions were able to do.

The question of the union seal I discussed because of the out-of-town problem.

The hours were ascertained, the forty-hour week, the eight-hour day, the time and-a-half for the overtime. Saturday, two and-a-half times for holidays and Sundays, a minimum of four hours.

Trial Examiner: That was all settled.

The Witness: Before, right. You see, we still spoke it over.

Trial Examiner: You did?

The Witness: Yes.

Trial Examiner: Even though you agreed?

The Witness: Yes.

Mr. Raphael: I notice on Item D there is a notation about it in his minutes.

The Witness: Yes.

Trial Examiner: If there was discussion about it, all right.

Mr. Raphael: Yes.

The Witness: Each meeting we went over each thing, because while it was determined, we wanted to be certain we [657] both knew exactly what we were talking about. In other words, these were the items.

And then, of course, after we had meetings there might have been some items brought up. I have here Mr. Raimist contends that the forty-hour week there might be a problem on, because the World has thirty-eight and three-quarter hours, because they

have a three-quarter-hour lunch hour, which makes the work week one and one-quarter hour short of the forty hours because of the five 15-minute differences. We said we had agreed on the forty-hour week and we said that this was what we were going to stick to.

Also, Mr. Raimist contended that the Aetna men were on a thirty-five-hour week. There was a section of the Aetna men that were on a thirty-five hour week, but we continued to say that this is what we agreed on, the forty hours.

That is why it was necessary to open these items, to constantly go over these items, because something always happened at subsequent meetings.

Trial Examiner: With that explanation, I can understand it.

The Witness: This was brought up by Mr. Raimist.

Trial Examiner: Go ahead.

The Witness: E, F and G again were postponed, to be discussed again in the future.

As far as the holidays were concerned, we again increased [658] our offer. We had first gone from the six to the seven. Mr. Raimist kept insisting on his original demand. We then offered the eighth holiday for the second year and an eighth holiday for the third year of a proposed three-year contract. We were offering an additional holiday for the second and third year of the contract.

The question of vacations was again reviewed. The original plan as put up we needed a little clarification on, also, as far as after the eight year, the

eleven days; the ninth year, twelve days, up to the fifteen-day accumulation for the twelve years.

We decided we needed an anniversary date in order to start talking all about the same thing. We wanted a June 1st anniversary date. That would be the cut-off. We would understand what exactly was the time that we would have to discuss. We wanted a June 1st date.

We also pointed out that there would be nothing due the men upon voluntary leaving. If the man was laid off, we would have to *pro rata* it. If he quit by himself, there would be nothing coming to him on that. We had to go through that thing again. We agreed on a June 1st anniversary date.

As to seniority, we again pushed it aside. We said no for the time being, unless we could work out some sort of formula which was not as severe or as demanding as Mr. Raimist's demand was at the time.

[659] Actually, by that time we just held it on the side. The fair answer would be that we held it on the side.

As to the question of promotions, we said we wanted it to remain at the discretion of the employer.

We discussed the discharge at will.

We discussed again the sick leave. Again it was one day per one year, up to five years—five days maximum; no accumulation, one-half pay for unused. This was brought up at the time.

The question of the bulletin board was again brought up and agreed on, but also it was again repeated that this would have to be approved by management before posting, with the idea that there would be no controversial matter put up.

We discussed severance pay. No severance pay if there was a question of lay-off for cause. I think by this time we were again making more concessions. We were talking about severance, whereas at the prior two meetings we were not talking about severance pay, but we felt that if a man was laid off for cause, proper cause, that there should be no severance pay.

There was a question of notice of intention after two years. Then we were trying to work out a formula as to what the severance pay would consist of and why there should be a severance pay, if there would be a lack of work or a reduction of work force. We discussed the various amounts [660] that would consist of the severance pay, whether it was after a man was there two years to give him two days, or three years—three days, or four years—four days, up to ten years—ten days, with a maximum of ten days. We also emphasized we wanted no severance pay if there was a voluntary quit.

The pension plan was out.

Welfare we again made an additional concession by offering one percent welfare plan for the second year of the contract and two percent for the third year of the contract. This was an additional offer as against the first two meetings that did not offer anything on the welfare plan.

The grievance procedure we said that would be discussed by Mr. Raphael and Mr. Raimist; dues, grievance procedure, arbitration within a grievance procedure.

A. Finkel, for Respondent, Direct.

Leave of absence, okay if prior notice of an agreement with international representative limited to a few people based on a ratio employed. On this there was a discussion that there might be a meeting somewhere in Chicago and half the shop would decide to go, and we said you should only send one or two if the shop was ten men. If it has fifty, you can send three or four, so as not to cripple a shop.

We discussed the conflict of statutes again. We agreed on the no-strike, no lock-out. There was no agreement as to the no lawsuit.

As to general wage, we said it would be discussed with [661] E, F and G in the future.

"Z" was a question of no subletting or transferring of work for the purpose of depriving employees of employment. We pointed out that the union should recognize agencies' ability to do work and details and drawings. Maybe I ought to clarify that.

Each manufacturer has agencies throughout the country. These agencies represent hollow metal, structural iron, toilet partitions, jalousies, columns, all phases of building construction. Most of them have their own engineering department. Some of them do their own detail work.

We pointed that out, that the union would have to be cognizant of the fact that there are some agencies who make their own details or do their own architectural drawings and that it would be pointless to have them send in an architectural drawing and just sit and retrace it and we would have to work from their drawing.

We told them we agreed we would not sublet any work for depriving people of any work within the scope of the draftsman, but he would have to be aware of the fact that there were certain agencies throughout the country that we all had that did a certain amount of their architectural drawings.

Q. (By Mr. Raphael) Mr. Finkel, Mr. Raimist testified on Page 39 of the transcript that at this meeting of October 10th there had been a discussion about sick leave, and that [662] you had again proposed to the union one day per year with a maximum accumulation of twenty days after twenty years of service, providing a person wasn't sick during that time, and if he were, those days would be deducted. Was there such an agreement? A. Never. Never at that time and never in the future.

Q. I am talking about at that time. A. Never at that time. I think I explained that before.

Q. There was also testimony given by Mr. Raimist that there was a discussion as to Note 1 of the General Notes in that July 19th list of demands.

His testimony was, on Pages 39 and 40 of the record, that it was all agreed to, and the only item that was objected to was a correction should be made in Note No. 3 because of the thirty-five-hour week which was contained, and the only exception that we took was the thirty-five-hour week, otherwise there were no objections. Do you have any recollection of that? A. Yes, I do. As a matter of fact, I even have a note on that.

Q. Would you tell us what you remember about that? A. As a matter of fact, with application to all the General Notes, namely, Roman I to Roman VI—let me go down the line on it.

On Number I we did not agree. I have it circled out. [663] The whole item is out.

Item II, I have "no." This is General Note II, General Note III, I should say. The question of the thirty-five hours was changed to forty hours.

Roman IV of the General Notes we did not agree to.

Roman V, the correction was made: "Employees are hired on an hourly basis rather than a weekly basis."

Roman VI, I have "no." In fact, I have a little note on the side. It says "This is No. II in reverse." We did not agree on any of that.

Mr. Weissman: May I determine from the witness what he is reading from?

The Witness: This was my working copy of Mr. Raimist's letter, his July 19th letter. As we took up each item, I used to mark alongside the discussion in conjunction with my other notes.

Mr. Weissman: This page which you are reading from now is not the same notes that you took during the meeting? This is not what you had been reading from?

The Witness: There was so much talk at the meetings that I worked both notes. This was my fresh paper notes and this was his July 19th letter.

Mr. Weissman: Is the second page the one that you used at each meeting? In other words, the same page?

The Witness: No. This one was worked at this meeting. [664] I kept this all in a chronological sequence as it came along. This was determined at

this meeting. This meeting plus my other notes on this meeting.

Then I might have continued to use this at subsequent meetings as an accumulation of what we had had agreed on and what we had discussed. This was my working basis in trying to arrive at something we were talking about.

Mr. Weissman: With respect to this second page, did you use that at the August 30th and October 2nd meetings?

The Witness: No.

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[746] **Stenographic Transcript of Testimony at Hearing of February 6, 1959.**

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[747] PROCEEDINGS

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[752] (The document previously marked for identification as Respondent's Exhibit No. 11 was received in evidence.)

• • •

[754] (The document previously marked for identification as Respondent's Exhibit No. 12 was received in evidence.)

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General Counsel's Exhibit 9.

ARCHITECTURAL & ENGINEERING
GUILD—LOCAL 66

AMERICAN FEDERATION OF TECHNICAL ENGINEERS—AFL-CIO
American Fed. of Labor Metal Trades Dept.
160 West 44th Street, New York 36, N. Y.
JUdson 2-4991 or JUdson 2-5050, Extension 112
Affiliated with N. Y. State Federation of Labor,
New York State Union Labor Trades Department,
Marine Workers' Metal Trades Dist. Council,
Central Trades & Labor Council of Greater N. Y.
Building & Construction Trades Council of
Greater New York, L. I., & Vicinity

July 11, 1956

Williamsburg Steel Products Co.
59 Paige Ave.
Brooklyn, N. Y.

Gentlemen:

Yesterday we received the National Labor Relations Board certification of our Union as the exclusive bargaining representative for the technical engineering employees as described in the National Labor Relations Board records by joint stipulation.

Thus, we ask that you make arrangements for either individual or Association wide bargaining to commence at a time mutually convenient but as quickly as possible. We shall transmit to you, Union's proposals within the next seven or eight days for your consideration.

Also, as per previous discussions and mutual understanding the wage rates and/or increases shall be negotiated on

General Counsel's Exhibit 9.

an individual Employer basis, we shall appreciate your arranging a conference also at time mutually convenient and as soon as possible to discuss same with you.

Thanking you for your attention.

Very truly yours,

A. LEO CARRICK

n

A. Leo Carrick
Secretary

VIA: REGISTERED MAIL
RETURN RECEIPT REQUESTED

CC: S. O. Raphael, Esquire, (for Company)
R. M. Stephans, President, A. F. T. E.

In compliance with the Law a copy of this letter is sent to U. S. Secretary of Labor; National Labor Relations Board; New York State Mediation Board; Federal Mediation & Conciliation Service.

General Counsel's Exhibit 10.

ARCHITECTURAL & ENGINEERING
GUILD—LOCAL 66

AMERICAN FEDERATION OF TECHNICAL ENGINEERS—AFL-CIO

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New York State Union Labor Trades Department,
Marine Workers' Metal Trades Dist. Council,
Central Trades & Labor Council of Greater N. Y.
Building & Construction Trades Council of
Greater New York, L. I., & Vicinity

July 19, 1956
Dictated July 18, 1956

Williamsburg Steel Products, Co.
59 Paidge Avenue
Brooklyn, New York

Gentlemen:

As per our letter to you of July 11, 1956, that we will submit to you within seven or eight days the items of the contract proposals for your consideration, please be advised that by action of the employees the following are the contract proposal items which they have instructed the Union to submit.

The items are:—

a) Recognition Clause.
b) Union Shop.
c) Union Seal on drawings, etc.

General Counsel's Exhibit 10.

d) 35 hour week, 7 hour day, Monday thru Friday
1½ overtime after 7 hours
2 overtime for Saturday
3 overtime for Sunday and Holidays
Minumum of 7 hours work or equivalent pay if called in to work on Saturday, Sunday or Holidays as per prescribed overtime rate of pay.

e) Job classifications and descriptions.

f) Minimum rates of pay only.

g) Merit Increase Provisions.

h) 11 Holidays with Pay.

i) Vacations—1 working day per month with pay, with maximum accumulation of 10 working days per year, but increased to 15 working days per year after 5 years service as of July 1st of each year.

j) Seniority.

k) Promotional Clause.

l) Discharge for just cause.

m) 1 day sick leave for each month of employment with maximum accumulation of 30 days at any time.

n) Bulletin Boards.

o) Severance Pay and notice of layoff.

p) Pension Plan.

q) Welfare Plan.

r) Shop Stewards and Committee performing duties at Company Plant during working hours to suffer no loss of pay.

s) Shop Steward permitted to collect dues once every two weeks.

t) Grievance Procedure—Union representative present at all times.

General Counsel's Exhibit 10.

u) Arbitration—use New York State Board of Mediation.

v) Leaves of absence for Union Business or personal reasons.

w) Conflict with Statutes Clause.

x) No Strike, No Lockout, No Law Suits Clause.
Your pay envelope is the true index of your determination and self-respect—ORGANIZE!

y) General Wage Increases commensurate with the duties and responsibilities of employees.

z) Invention Copyright and Patents protection clause.

z-1) No subletting or transferring of work for the purpose of depriving employees of employment.

z-2) One year Agreement with automatic renewals and 60 days notice for changes additions, modifications or terminations.

z-3) Establishment of Apprenticeship Training Program.

z-4) Incorporate in the Agreement that employees shall be paid in cash each week, or if paid by check that they be given a reasonable amount of time with pay to cash such checks. (It was also reported at the meeting that some of the Companies paid by checks at quitting time on Friday night, which is very unsatisfactory.)

GENERAL NOTES

I —No Employee shall lose any benefits or suffer any reduction of salary by virtue of the signing and application of this Agreement.

II —Employees shall be classified in the classification which covers the highest skill performed by such Employee.

General Counsel's Exhibit 10.

III—Any and all references in this Agreement to the hourly rate of pay are for computation purposes only, and is equal to the Employees weekly salary divided by thirty-five (35).

IV—The Company agrees to notify the Union affected, whenever any Employee is hired, or whenever an Employee's employment is terminated—such notice to be sent within one (1) week of the occurrence of such hiring or termination and shall include the name, address, classification, section and rate of pay of the Employee involved, as well as the date of such hiring or termination becomes effective.

V —Employees are hired on a weekly basis.

VI—Except in the case of reclassification, in accordance with the provisions of the Seniority Article hereof, an Employee shall do any work assigned to him under any classification equal to or lower than his classification without reduction of his rate of pay.

Thus, we ask you make arrangements for either individual or Association wide bargaining to commence at a time mutually convenient, but as quickly as possible.

Also, as per previous discussions and mutual understanding the wage rates and/or increases shall be negotiated on an individual Employer basis, we shall appreciate your arranging a conference also at time mutually convenient and as soon as possible to discuss same with you.

Thanking you for your attention.

Very truly yours,

A. LEO CARRICK, *Secretary*

General Counsel's Exhibit 10.

ALC:RR
VIA: REGISTERED MAIL
RETURN RECEIPT REQUESTED
CC: S. O. Raphael, Esquire (for Company)
R. M. Stephens, President, A. F. T. E.

In compliance with the Law a copy of this letter is sent to the U. S. Secretary of Labor; National Labor Relations Board; New York State Mediation Board; Federal Mediation & Conciliation Service.

General Counsel's Exhibit 16.

ARCHITECTURAL & ENGINEERING GUILD—LOCAL 66

AMERICAN FEDERATION OF TECHNICAL ENGINEERS—AFL-CIO

American Fed. of Labor Metal Trades Dept.
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New York State Union Labor Trades Department,
Marine Workers' Metal Trades Dist Council,
Central Trades & Labor Council of Greater N. Y.
Building & Construction Trades Council of
Greater New York, L. I., & Vicinity

March 15, 1957

Williamsburg Steel Products, Inc.
59 Paidge Avenue
Brooklyn, New York

Attention: Mr. Alfred Finkle

Gentlemen:

We were very much surprised that in the midst of our collective bargaining negotiations, and during the interim of conferences at the New York State Board of Mediation concerning the collective bargaining negotiations, that on March 11, 1957 and retroactive to January 1, 1957 you informed the employees that their annual ten (10) paid sick leave days was reduced to five (5) days.

That such unilateral action is improper and morally wrong is one thing,—but that this apparently is the Company's way of punishing the men for joining our Union is obvious,

no matter how sugar coated the language of your announcement.

We protest your action,—it is illegal.

Very truly yours,

J. LAWRENCE RAIMIST
Business Manager

JLR:r

CC: S. O. Raphael (Company's Attorney)
National Labor Relations Board (Case No. 2-RC-8148) 1956
New York State Board of Mediation

General Counsel's Exhibit 17.

WILLIAMSBURG STEEL PRODUCTS COMPANY

Paidge Ave. Brooklyn 22, N. Y. Evergreen 9-5520-1-2

March 16, 1957

Architectural & Engineering Guild—Local 66
American Federation of Technical Engineers—AFL-CIO
160 West 44th Street
New York 36, New York

Attention: Mr. J. Lawrence Raimist

Gentlemen:

I received your self-serving irrelevant letter of March 15, 1957 with reference to a revised sick leave benefit plan which this firm has without obligation on its part introduced and changed as conditions changed.

General Counsel's Exhibit 17.

We do not feel obligated to explain the matter to you or anyone else since we are not as yet bound to you until an agreement has been reached between us, and with the actions that you have used thus far, it is doubtful when such agreement will be consumated. I refer of course to your apeing the Russian delegates at the U. N. by "taking a walk" during a conference between the employers group and you on November 1, 1956. (Other than at the N. Y. State Board of Mediation on December 5, 1956 when you were requested to continue negotiations.)

Since then you have not been seen or heard from which I think is something you ought to tell the men you represent.

I am ready, willing and able to produce to the State Board of Mediation, if it is necessary to do so, the procedure used in the past regarding sick leave and the new system I have set up. I am positive that any person with a minimum degree of common sense will find the new procedure an honest benefit to those employees who are not using sick leave as a pretext for taking time off and getting paid for it.

Your letter is not only a brazen untruth sent to the National Labor Relations Board and the N. Y. State Board of Mediation to cloud the issue and set yourself up as a judge of morality and righteousness, but a slur on our honesty and goodwill to our deserving employees.

It has been our understanding that labor unions seek to prevent dishonesty among their members with reference to their relations to their employers. Either you are condoning such thieving or you haven't taken the trouble to investigate the facts.

General Counsel's Exhibit 17.

We can prove beyond a particle of doubt that our sick leave benefits have been abused and our action is based on this fact and benefits above and beyond the former plan will accrue to our honest employees through our new plan.

There is no need to explain to you what we have done. We have no obligation to you. We have as yet no contract with you due to your own obstinacy and will to draw out negotiations. We are merely answering in order to have the N. L. R. B. and the N. Y. S. B. of M. aware of the fact that what you attempt to do is a completely base and dastardly deed.

Insofar as your last paragraph is concerned all we can say is to repeat an old proverb, "Let not the pot call the kettle black."

Yours truly,

WILLIAMSBURG STEEL PRODUCTS COMPANY

A. FINKEL

A. Finkel

AF:amp

cc: S. O. Raphael
National Labor Relations Board (Cas No. 2-RC-8148)
1956
New York State Board of Mediation

General Counsel's Exhibit 28.

ARCHITECTURAL & ENGINEERING
GUILD—LOCAL 66

AMERICAN FEDERATION OF TECHNICAL ENGINEERS—AFL-CIO

American Fed. of Labor Metal Trades Dept.
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Marine Workers' Metal Trades Dist Council,
Central Trades & Labor Council of Greater N. Y.
Building & Construction Trades Council of
Greater New York, L. I., & Vicinity

May 17, 1957

Williamsburg Steel Products Co.
59 Paidge Avenue
Brooklyn, New York

Attention: Mr. A. Finkle

Gentlemen:

On May 13, 1957 at the New York State Board of Mediation conference we were asked to defer strike action until Wednesday, May 15, 1957, Noon, by which time you were to inform us of your decision regarding our proposal to have the New York State Board of Mediation appoint an Arbitrator to resolve this issue of the first contract. We made it very clear that the American Arbitration Association was not acceptable to us in this instance because of expense, etc.

General Counsel's Exhibit 28.

Finally at 2:51 p. m. on Wednesday (not Noon) the New York State Board of Mediation Representative (Mediator) phoned us that he had just been informed that you would arbitrate but only if the A. A. A. was the Arbritration Agency.

Our reply to him was no, since our Mondays stipulation for delaying the strike was based on an answer dealing with the New York State Board of Mediation as the only Agency to appoint the Arbitrator, since our Union could not afford the expense, etc.

We have even waited until today. We have been waiting since July 5, 1956. We cannot help but feel, with all that has gone on, that we are being stalled for the purpose of destruction of our Union at your Plant and Offices.

Thus, unless your Company individually (since we are certified individually by N. L. R. B.) meets with us, or arranges to meet with us immediately, for the purpose of consummating a collective bargaining agreement you alone will be responsible for whatever happens.

Thanking you for your attention

Very truly yours,

J. LAWRENCE RAIMIST, C. E., P. E.
Business Manager

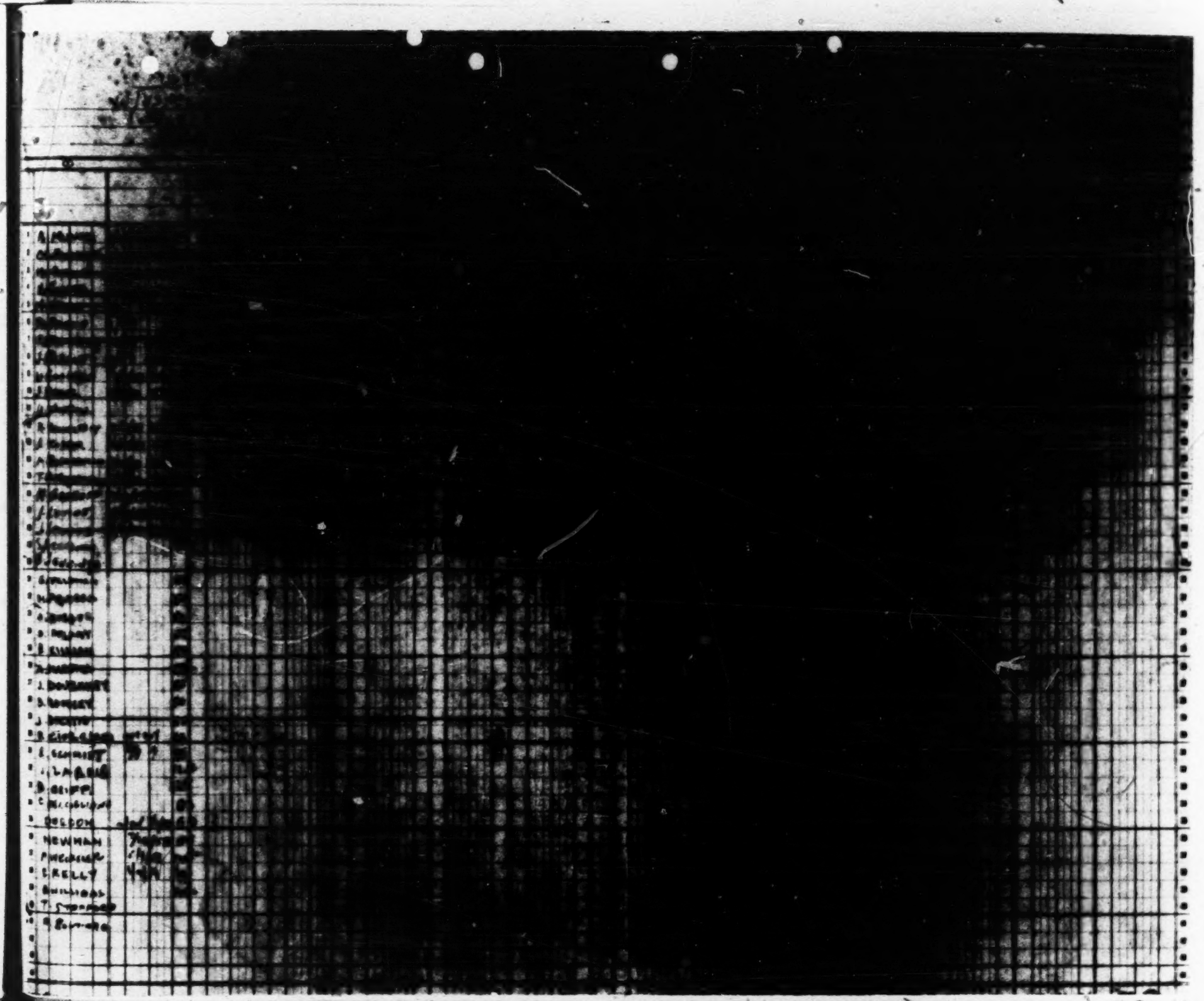
JLR:r
VIA CERTIFIED MAIL

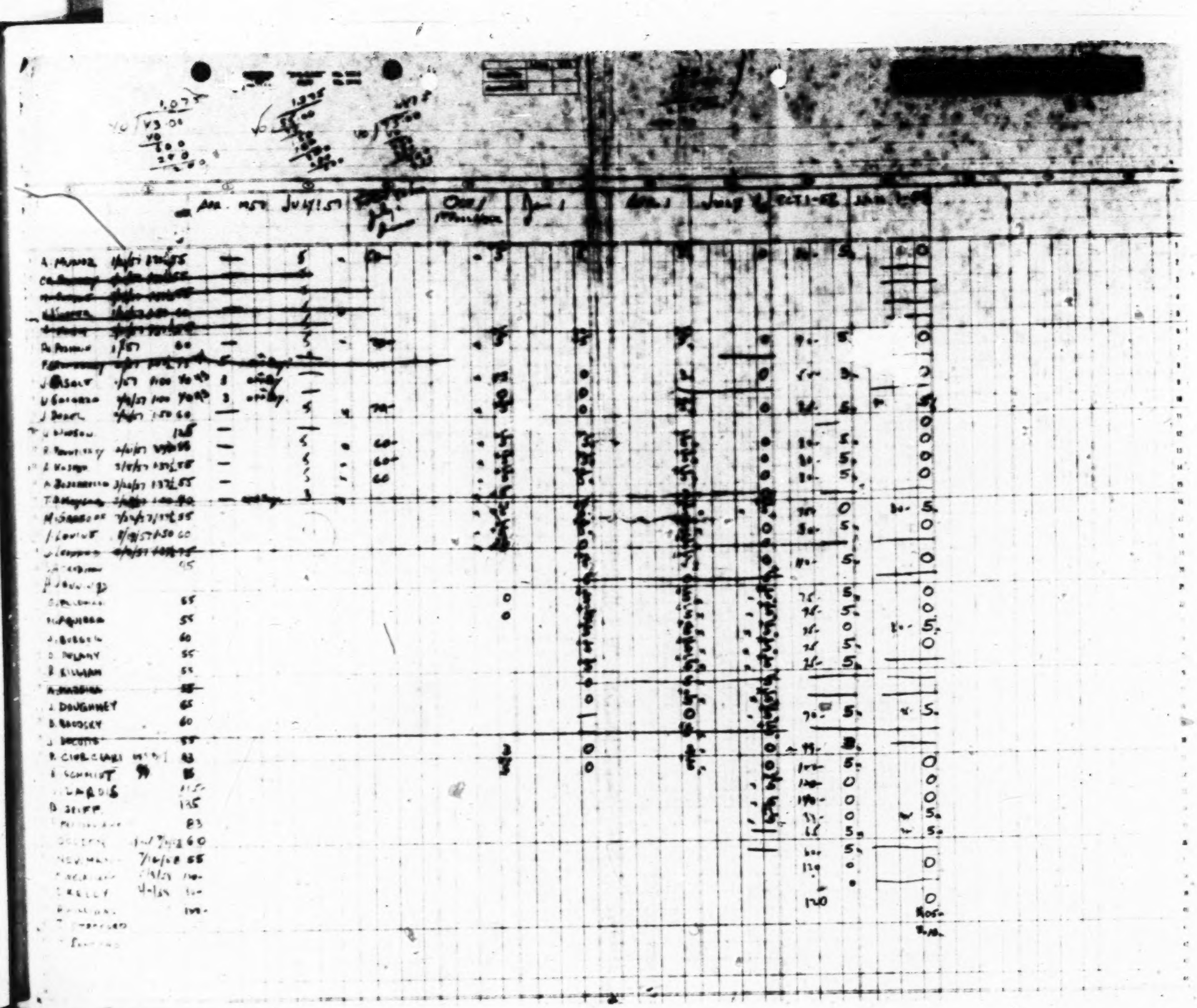
P. S. We have just heard that you posted notices yesterday—that is in the Drafting Rooms, etc.—which implies, or could be interpreted to imply that agreement to have the

General Counsel's Exhibit 28.

A. A. A. arbitrate have been reached. You know that this has never been a fact.

CC: R. M. Stephens, President A. F. T. E.
S. O. Raphael, Attorney for Company
New York State Board of Mediation
National Labor Relations Board, Case No. 2-RC-8148
Federal Mediation & Conciliation Service
Building Trades Council
Teamsters District Council





General Counsel's Exhibit 31.

WILLIAMSBURG STEEL PRODUCTS COMPANY

March 11, 1957

Paidge Ave. . Brooklyn 22 N. Y. . EVergreen 9-5520-1-2

NOTICE TO ENGINEERING AND OFFICE PERSONNEL—PAID TIME FOR ABSENCE DUE TO ILLNESS

A recent review of our sick leave policy has proved that we have still not achieved our goal of improving attendance. Sick leave is still being abused and we believe that many of our personnel take unjustified sick days under the mistaken idea that they are entitled to these days whether or not they are actually sick. This is not the intent of sick leave.

Our sick leave policy is changed retroactive to the first of January 1957 in order to increase the benefits for those employees who do not abuse sick leave, and to decrease the benefits for those who do abuse sick leave.

Each employee is allowed a total of five sick days per year. Payment will be made for absence due to illness only.

Employees with less than one year of continuous employment shall be paid not exceeding one day for each two months of employment.

Sick days remaining at the end of a year will be doubled and accumulated to an employee's credit to a mixiumum accumulation of twenty days. For each sick day not used the employee will receive two days toward the twenty day maximum accumulation. It will thus be possible to reach the twenty day maximum within two years. When the twenty day maximum has been achieved, the employee will

receive cash payment for the unused sick days, beyond the accumulated twenty days after the year end. Cash payments will be made on the basis of the five day per year sick benefit.

For example, if you do not use up any sick days during the year the five unused sick days will be doubled and ten (10) days put in your account. (Previously you would have accumulated a maximum of five days.) If you are sick one day during the year you will now accumulate eight days. (Previously four) In short all unused sick days are doubled while previously only half were carried over. After accumulating twenty days by not taking any sick leave for two years, one will receive a full weeks pay by not taking any sick leave during the third year.

This plan is an incentive for improved attendance. We hope that the personnel involved will try to reach the maximum goal of unused sick leave which will make it possible for them to profit by the above outlined cash benefit.

WILLIAMSBURG STEEL PRODUCTS CO.

ALFRED FINKEL.

General Counsel's Exhibit 32.

WILLIAMSBURG STEEL PRODUCTS COMPANY
Paidge Ave. . Brooklyn 22, N. Y. . EVergreen 9-5520-1-2

March 28, 1955

NOTICE TO CLERICAL PERSONNEL—PAID TIME FOR ABSENCE DUE TO ILLNESS

Office employees shall receive payment for absence due to actual illness not exceeding 10 days per year. Payment during absence from employment will be made only in cases involving hte actual illness of the employee.

Employees with less than one year of continuous employment shall be paid not exceeding one day for each month of employment for absence due to actual illness, not exceeding a total of 10 days per year.

Unused time for illness shall be accumulated annually for the benefit of the employee to the extent of one-half of such unused time to be carried over for subsequent years and payment will be made for the balance or other half directly to the employee the first month of the following year, *e. g.*, employee loses four days due to illness. He would carry three days towards the accumulation and be paid for three days making a total of ten days for the year.

The maximum that may be accumulated for such sickness shall not exceed twenty days.

This additional benefit of payment for unused sick leave is granted to all employees as an incentive for improved attendance and the complete cooperation by all personnel is urgently requested.

WILLIAMSBURG STEEL PRODUCTS COMPANY

ALFRED FINKEL

General Counsel's Exhibit 33.

WILLIAMSBURG STEEL PRODUCTS COMPANY
Paidge Ave. . Brooklyn 22, N. Y. . EVergreen 9-5520-1-2

May 17, 1956.

NOTICE TO ENGINEERING AND OFFICE PERSONNEL—PAID TIME FOR ABSENCE DUE TO ILLNESS

On March 28, 1956, a notice was posted with regard to additional payment benefits for unused sick leave as an incentive for improved attendance. Unfortunately, the office personnel did not respond to this plan as was planned and the following rules with regard to sick leave are to be followed.

Office employees shall receive payment for absence due to actual illness not exceeding 10 days per year. Payment during absence from employment will be made only in cases involving the actual illness of the employee.

Employees with less than one year of continuous employment shall be paid not exceeding one day for each month of employment for absence due to actual illness, not exceeding a total of 10 days per year. Accumulated sick leave will be accrued at the rate of one half of unused sick leave.

The year after the 20 day maximum has been reached, the employee will receive in money the equivalent of 50% of the time that he does not use up as sick leave for that year and still remain with the 20 day sick leave to be used if necessary. For example, at the end of a fixed period of time, any individual employee that has acquired 20 days maximum who goes through an entire year without losing any time due to illness will be paid one full week's

salary, representing five (5) days which is half of the unused sick leave in excess of the 20 days maximum.

This plan will be used as an incentive for improved attendance and with the hope that personnel will try to reach the maximum goal of unused sick leave and thereafter receive the monetary benefits by not using sick leave after the maximum has been accumulated.

WILLIAMSBURG STEEL PRODUCTS COMPANY

ALFRED FINKEL

AF:J

[redacted]

1) The Company agrees to retain in it's employ only members of the Union who are in good standing.

2) Upon written request from the Union, the Company agrees to discharge any employee who does not maintain good standing membership in the Union.

3) All Employees who are not members of the Union at the time of signing of this Agreement, and all new Employees hired by the Company must become members of the Union immediately after they have been in the Company's employ for thirty (30) days. — S/Bo

ARTICLE X - UNION SEAL

1) The Union Seal shall appear on all drawings, listings and schedulings. This Seal shall be the one that is supplied by the Union and shall at all times remain the property of the Union. The Seal shall be entrusted to the care of the Shop Steward.

[illegible] Company has discussed agreements around the country who have [illegible] for their respective employees, and [illegible] it is understood that the Union will not be [illegible] any [illegible]. However with regards [illegible] agreement of all parties to this [illegible] understood that this paragraph is not to be used [illegible] any way from any of the Employees at the offices [illegible] by encouraging the agent to do the drafting [illegible] for them to cover such drawings, listings or [illegible]. If mutual agreement the Union feel may be omitted from drawings of certain jobs.

ARTICLE V - DISCHARGE

1) Discharge shall be subject to the Grievance and Arbitration Procedure. In such discharge or suspension shall be revoked, the Employee shall be reinstated without loss of any benefits, however the Arbitrator shall determine the amount of pay for time lost. If the discharge is sustained, such decision shall be accepted as final by the Union and by the Employee and no claim for lost pay may be made. If the discharged Employee does not submit to the Grievance and Arbitration Procedure within three (3) working days after date of discharge the Company in its sole discretion shall take such further action as it deems appropriate, and the Employee waives his right to present the matter as a grievance.

2) Any Employee who is discharged for non-payment of Union dues loses all benefits and privileges.

ARTICLE VII - BULLETIN BOARD

The Company shall provide one bulletin board for the purpose of posting notices addressed to Employees in each location where Employees represented by the Union are working. The Company agrees to permit posting of Union notices on the Bulletin Boards and, after approval by the Company, to post other non-controversial data.

ARTICLE VIII - SHOP STEWARDS

1) Shop Stewards may be appointed by the Union, one for each location. Such Shop Steward shall not be laid off or discharged for performing the duties of a Steward. He shall be the last man laid off in all the classifications in the divisions in which he has seniority.

2) Every other week, on pay day, each Shop Steward shall be permitted to collect Union dues on Company property, and on Company time, for a period not exceeding one hour each time.

ARTICLE IX - SENIORITY

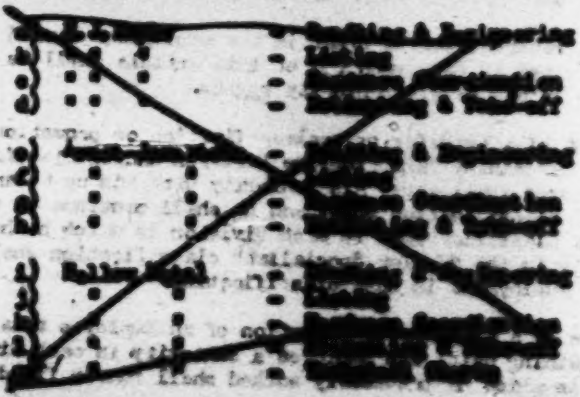
1) Seniority is defined as the length of an Employee's service (in years, months and days) with the Company, all in accordance with the provisions of this Article.

2. a) A new employee shall be considered temporary for the first

thirty (30) calendar days of his employment and shall not have seniority rights during said thirty (30) day period. If retained thereafter, he shall acquire seniority rights as of the first day of employment.

b) Time lost due to illness or excused absence shall not be included as part of the thirty (30) calendar day temporary period.

c) Seniority shall be accumulated by length of employment within classifications within the following Divisions, and as further provided in this Article. The Divisions are:



d) After seniority becomes effective, except for service breaks of one or more of the following reasons shall result in loss of seniority and termination:

a) Time lost because of illness or injury.

b) Leaves of absence [illegible] XVII.

c) [illegible] under Article VI up to [illegible]

d) Service in the Armed Forces of the United States of America [illegible]

e) Discharge for cause, [illegible] with the Agreement for the following purposes:

f) Discharge for cause, unless discharge is revoked.

[illegible]

[illegible]

b) The method of computing seniority shall be as follows:

b-1) Computation of number of days of seniority shall be made on the basis of a 365-day year. A fraction of a year shall be calculated by considering the exact number of calendar days, including the day the classification was entered and the day it was left.

b-2) In those cases where two or more employees have equal seniority in a given exempt-local classification, the employee with the greatest over-all seniority shall be given preferential listing.

b-3) Those employees with equal over-all seniority shall be

a-1) For all hours worked in excess of eight (8) hours on any Standard Working Day.

a-2) For all hours worked prior to the regularly scheduled starting time of work.

a-3) For hours worked after Standard Working Hours.

a-4) For all work on Saturday.

b) An Employee shall be paid a total of two and one-half (2½) times his regular hourly rate of pay for hours worked on Sundays or the Legal Holidays or days observed as such as described in Article XXIII.

3. If an Employee is required to work on Saturday, Sunday or Holidays, then Employee shall be given not less than four (4) hours of work or equivalent pay, at the prescribed overtime rate, except that no one shall work on Labor Day, Christmas Day, or New Year's Day.

4. The Union agrees not to arbitrarily refuse permission to Company to work employees on overtime; the Company in turn agrees to try to equalize distribution of overtime work among the Employees.

5. There shall be no [illegible] of overtime.

6. [redacted]

ARTICLE XIX - [redacted]

1. [redacted]

ARTICLE XIII - PAID HOLIDAYS

Providing the following holidays, or days observed as such, fall within the Standard Work Week, Monday to Friday inclusive, employees, except those on a leave of absence, shall receive a full standard working day's pay of eight (8) hours without working.

New Year's Day	Memorial Day	Election Day
Lincoln's Birthday	Independence Day	Thanksgiving Day
Washington's Birthday	Labor Day	Christmas Day

ARTICLE XIV - LEAVES OF ABSENCE

1. Leaves of absence without pay may be granted by the Company for good and sufficient reasons, providing, however, that no leave of absence will be granted for the purpose of taking employment with another Employer, or becoming self-employed, and also in case a layoff affects an Employee on leave of absence, then his leave of absence is automatically cancelled and he is laid off or later rehired in his proper seniority sequence. It is also understood that such leaves of absence shall not be violated by any party in any manner which may serve to circumvent the provisions of this Agreement. The Union shall be notified by the Company of any leave of absence granted to any Employee who has any kind of seniority rights within the Bargaining Unit.

2. Any Employee being elected to permanent office or as delegate to any Union or International activity necessitating temporary leave of absence, not exceeding one (1) year, shall be granted such leave of absence, without pay, and shall at the end of the term in the first instance or at the end of his election in the second instance, be re-employed, provided his seniority as defined in this Agreement entitles him thereto. Such re-employment shall be at the rate of pay with the same differential above the prevailing minimum rate for the classification as was his differential above the minimum rate at the time the leave of absence was taken. Such Employee shall accumulate seniority during the leave period. Any Employee on leave of absence under this paragraph shall not accept any other employment except Union or International business. If he does, he shall lose his seniority rights and his protected right of re-employment. This leave shall be limited to one Employee at any one time, with an option of renewal for one (1) additional year.

ARTICLE XV - PATENTS AND INVENTIONS

1. The Company shall only be entitled to the entire right, title and interest of the Employee only in and to any and all inventions and/or copyright matter made by the Employee solely or with others, during the period of his employment. Any invention or copyright matter jointly developed by the Employee in the employment of the Company and during his own time, shall be the property of the Employee, and the Company shall have a non-exclusive, royalty free, irrevocable license to use such invention and/or copyright matter.

2. This agreement shall supersede and render null and void all prior

[redacted]

[redacted] vacation allowance. The [redacted] absence due to illness.

[redacted] Article VI.

[redacted] NOT APPLICABLE [redacted]

[redacted] provisions hereof relative to termination in this Article XVII shall apply to all hourly employees [redacted] inductees into the Armed Forces, termination of employment because of [redacted] which may apply as provided for in Article VI [redacted]

1. There shall be one (1) Standard Work Week's notice of termination of employment given to all employees employed [redacted] hereof. Employees [redacted] to receive vacation pay since previous June 1st.

2. There shall be two (2) Standard Work Weeks' notice of termination of employment given to all employees employed more than one (1) year; employees [redacted] to receive vacation pay since the previous June 1st. BUT

3. In order to receive accrued vacation pay at time of termination of employment, the provisions set forth in Paragraphs 1, 2, and 3 in this Article XVII must be complied with.

ARTICLE XVIII - WELFARE FUND (OUT)

1. A Welfare Fund is herewith established and effective as described below:

a) The Welfare Fund shall be a separate and distinct entity and shall be administered by four (4) non-salaried Trustees, who shall be hired by the Welfare Fund and at the Welfare Fund's expense. Two (2) Trustees to be selected by the Company and two (2) selected by the Union.

b) Funds contributed to this Welfare Fund shall be used for the Employee benefits pursuant to terms of an Agreement and Declaration of Trust to be executed by the parties for such purpose.

c) It is herewith agreed that the Welfare Fund is incorporated as part of this agreement, insofar as contributions and the obligation to contribute. All other responsibilities with to and with the Welfare Fund.

d) The contributions to this Welfare Fund by the Company shall be on account equal to a percentage [illegible] of each Employee's full wage.

[illegible]

2. [illegible] Welfare Fund may be established for [illegible]

ARTICLE XI - NO STRIKE, NO LOCKOUT, NO LAY SUITS

1. Except for any of the reopening or termination provisions of Article XXIV of this Agreement, the Union agrees that it will not call, sanction, or permit a strike or other stoppage of work or sitdown or slowdown affecting operations of the Company; nor shall any members of the Union collectively leave the work of the Company; nor collectively or individually picket any place of business of the Company, and the Company agrees that there shall be no lockout.

2. It is understood that refusal by any Employee of the bargaining unit of this Company to cross or violate a picket line established against the Company by any Union (other than a competitive Union) shall not constitute a violation of this Agreement. (OUT) — only for protection of ~~unit~~ against of union

OUT

3. Shop Stewards are not permitted to commit the Union to any matters, except as provided for in this Agreement, unless the Company is specifically advised to the contrary.

4. Any actions taken by any Employee in the bargaining unit, with or without the authorization, instruction or approval of the Union, shall be processed only through the Grievance and Arbitration Procedure. This includes any violation of Paragraph 1 of this Article XI.

5. The Union agrees not to process a grievance and to give no assistance, financial or otherwise, to any of the Employees in the bargaining unit, who participate in a breach of Paragraph 1 of this Article XI.

6. The Company and the Union agree that the Grievance and Arbitration Procedure provided in this Agreement is adequate to secure fair and final determination of all grievances, disputes, differences or any kind of misunderstanding arising between the parties; and it is agreed that any and all such grievances, disputes, differences or any kind of misunderstanding arising between any of the parties shall only be processed through the Grievance and Arbitration Procedure.

ARTICLE XII - NO SUBLETTING OR TRANSFERRING OF WORK

The Company retains the right to sublet work as the necessities of its business require, except that no Employee or those on layoff, whose assigned duties normally include the performance of such sublet work, shall be deprived of regular employment as a result. Also see Article V regarding work performed by the Company's agents.

ARTICLE XIII - CLASSIFICATIONS AND DEFINITIONS - MINIMUM RATES OF PAY - WORK WEEK' PREMIUMS.

1. The foregoing minimum rates for a standard work week of the following classes of Employees employed by this Company will be:-

Assist Chemist [illegible] per week minimum for Junior Specialists

[illegible] Specialists

Automotive

[illegible] shall be an additional increase of five (5.00) dollars per standard work week, every six (6) months until the [illegible] classification is reached.

- END -

(Make schedule of Employees)

$ 50.00 per week minimum for Apprentices

There shall be an automatic increase of five ($5.00) dollars per standard work week every six (6) months, until the Junior classification is reached.

$ per week minimum for Technical Clerks

2. It is understood that hereafter, after the January 1, 1956 Contract, any and all general wage negotiations shall affect only those of the Senior or higher classifications; with the proviso that any Junior or Apprentice who attains a rate of pay equal to that of the Senior classification or higher, that such employee shall after obtaining such rate of $110.00 per standard work week or higher be included in any or all general wage increases already agreed to or to be negotiated in the future.

3. DEFINITIONS OF CLASSIFICATIONS OF EMPLOYEES:-

SENIOR SPECIALIST - A member of this classification is recognized as being superior over the Senior classification in his knowledge, experience and performance of special tasks, or he may be giving technical supervision to other employees.

SENIOR - A member of this classification must have graduated from an architectural or technical engineering school, received a degree in a recognized technical course and must have in addition, two (2) years of architectural or technical engineering experience, or instead, must have had six (6) years of architectural or technical engineering experience in the architectural, technical engineering, hollow metal, or metal specialties industries.

INTERMEDIATE - A member of this classification must have had four (4) years of architectural or technical engineering schooling in a recognized technical course, or instead, must have had four (4) years of architectural or technical engineering experience in the architectural or technical engineering, hollow metal or metal specialties industries.

APPRENTICE - The beginner in this classification has had no architectural or engineering schooling or experience. A member of this classification who has had less than two (2) years of architectural or technical engineering schooling or less than two (2) years experience must, and as a condition of employment, attend evening technical high school, evening vocational school, evening engineering or architectural school or equivalent for two (2) years.

NOTE I: Technical non-graduates shall be credited with one (1) year's experience for each completed year of day schooling in a recognized architectural or technical engineering school, with a maximum of four (4) years credit for graduation.

NOTE II: Completion of one (1) year of night schooling in a recognized architectural or technical engineering school is equivalent to completion of one-half (1/2) year of day schooling described in NOTE I above.

[illegible] (Definition):- Work is self-explanatory.

[redacted]

I - No Employee shall lose any collective bargaining benefits or suffer any [redacted] by virtue of the signing and application of this [redacted]

II - To receive holiday pay (ARTICLE XIII) the employee must work his fourth one (4th) day during the week in which the holiday or the observed [redacted] such holiday, except that this provision shall not apply to Employees on sickness or ill.

III - Any and all references in this Agreement to the hourly rate of pay are for computation purposes only and is equal to the Employee Standard work week salary divided by forty (40), except in the case of the Milwaukee and/or "Shop" Man (as referred to in ARTICLE II, Para. 6) the standard work week salary is to be divided by thirty-five (35). out

IV - The Company agrees to notify the Union affected, whenever any Employee is hired, terminated, or his classification or rate of pay is changed — such notice to be sent to the Union within one (1) week of the occurrence of such hiring, termination, or change, and shall include the name, address, classification, [redacted] rate of pay of the Employee involved, as well as the effective date of such occurrence.

V - Employees are hired on a standard work week basis.

VII – [redacted]

VIII – An Employee till more than two (2) years shall have his seniority frozen as of the end of each two (2) year period.

ARTICLE XXIV – TERMS OF AGREEMENT

1. This Agreement (it's full contents and intent) is effective January 1, 1956 and until June 30, 1958; however, this Agreement shall continue in full force and effect thereafter from year to year unless either party shall notify the other of any desire to terminate or change at least sixty (60) days prior to the yearly expiration of this Agreement. Such notification is to be in writing by Registered Mail. In the event that the changes affect only certain Articles, the unchanged Articles of this Agreement shall continue in full force and effect.

2. The No Strike, No Lockout provisions of ARTICLE XI of this Agreement shall not apply if no Agreement is reached on the suggested amendments or additions between the parties by June 30th of an y Agreement year.

ARTICLE XXV – MOST FAVORED NATIONS CLAUSE

Anything to the contrary notwithstanding, no other Employer in The Hollow Metal Door & Buck Industry shall be accorded terms and conditions in a collective bargaining Agreement which are more favorable than those contained herein, including classifications and minimum rates of pay. The foregoing however, shall not apply to general wage increases and rates of pay.

ARTICLE XXVI – BE MUTUAL CONSENT THIS AGREEMENT AND ALL IT INCLUDES MAY BE TRANSFERRED TO BECOME A PART OF THE ASSOCIATION THIS AGREEMENT.

FOR: [redacted]

FOR: ARCHITECTURAL & ENGINEERING STEEL, LOCAL [redacted] OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS, [redacted]

Business Manager

President

Acting Secretary

Chairman of Negotiating Committee & Hollow Metal Industry Division

SEAL:

DATE:

SEAL:

DATE:

Local 2-61-OK Rec'd

Copy

1/24/59 Williamsburg Steel Rec'd

No. Pages

Respondent's Exhibit 11.

WILLIAMSBURG STEEL PRODUCTS COMPANY
Paidge Ave. . Brooklyn 22, N. Y. . EVergreen 9-5520-1-2

May 21, 1957

Architectural and Engineering Guild, Local #66
160 West 44th Street
New York 36, New York

Attention: Mr. J. L. Raimist:

Gentlemen:

Here we go again.

If you would be as meticulous in your reporting and letter writing as you are in following up your own set deadlines to us, we believe that both of us would have accomplished something by this time.

We informed counsel of our decision as to arbitration Wednesday morning May 15, 1957 and it could be possible that the mediator informed you at the time you stated. Suppose you ask him.

I believe that we also have the right to choose an arbitrating unit that we feel is an impartial body. The fact that you claim you cannot afford to share in the costs of such a body doesn't seem at all logical since you appear to be ready to strike the men and pay them between 50 and 80% of their wages for as long as they stay out of work. We believe that these costs would be greater than your share of arbitration. Certainly it is no concern of ours as to your ability to afford this very fair way of settling matters.

Respondent's Exhibit 11.

This only points up your lack of desire to compromise or bargain. As far as you are concerned everything is a one way proposition; your way and no other.

Your postscript in which you choose to interpret our bulletin as stating that we have agreed with you to have the AAA arbitrate, is a downright fabrication of the truth, written in order to cloud the thinking of the list of individuals to whom you sent copies of your letter and to place us in an unfavorable light.

Our bulletin, copy of which is being sent to all these parties is self-explanatory, doesn't mention any such thing as you state, and has been posted purely and simply to inform the men of our position of the facts which we know they never completely get from you. We think it is high time that they were informed of every move; not just what you want them to know. Let them be advised completely of what goes on at our negotiations.

It would also be a bit wiser on your and your agents part to stop making false statements that might jeopardize your position in your own field. Your accusation that AAA is a captive body is rather dangerous.

We would like to inform you that immediately after this statement was made we saw fit to post a list of the names of the people affiliated with the AAA and underline the names of the greatest labor leaders in the country who are part of that organization. I don't see any reference made in your letter regarding this little act of yours.

We are ready to continue to negotiate or to arbitrate, but if it is arbitration we want AAA. As to our responsibility for whatever happens, we are well aware of it and

Respondent's Exhibit 11.

would suggest that you too should think of the responsibility that will devolve on you. We accuse you of absolute refusal to come to any terms whatsoever. So far it has been "No" right down the line with you. Let us see if you can for once come up with a "Yes."

Yours truly,

WILLIAMSBURG STEEL PRODUCTS CO.

ALFRED FINKEL
Alfred Finkel

AF/drs
C. C.

R. M. Stephens, President A. F. T. E.
900 F St. N. W. Washington, D. C.

S. O. Raphael, Attorney for Company
18 E. 41st St. N. Y. C.

New York State Board of Mediation
270 Broadway, N. Y. C.

National Labor Relations Board,
2 Park Ave., N. Y. C. Case #2-RC-8148

Federal Mediation & Conciliation Service
341 9th Ave. N. Y. C.

Building Trades Council
441 Lexington Ave. N. Y. C.

Teamsters District Council
364 W. 34th St. N. Y. C.

Respondent's Exhibit 12.

WILLIAMSBURG STEEL PRODUCTS COMPANY

PAIDGE AVE. . BROOKLYN 22, N. Y. . EVERGREEN 9-5520-1-2

MAY 16, 1957

TO ALL DRAFTSMEN AND LISTERS

DUE TO THE FACT THAT NEGOTIATIONS BETWEEN THE EMPLOYERS AND THE UNION HAVE COME TO AN *IMPASSE* AND NO IMMEDIATE AGREEMENT IS IN SIGHT, WE HAVE OFFERED ON MAY 15, 1957 TO ARBITRATE OUR DISPUTE UNDER THE AUSPICES OF THE AMERICAN ARBITRATION ASSOCIATION.

THIS ASSOCIATION IS IN EXISTENCE FOR MANY YEARS AND IS RECOGNIZED THROUGHOUT THE COUNTRY AS AN IMPARTIAL BODY OF JUDGES.

WHEN ARBITRATION IS AGREED UPON BOTH DISPUTANTS *MUST* ABIDE BY THE DECISIONS OF THE ARBITRATOR.

OUR PURPOSE IN ADVISING YOU OF THIS OFFER IS TO INFORM YOU OF THE PRESENT STATUS OF THE SITUATION.

WILLIAMSBURG STEEL PRODUCTS CO.

BATAVIA TIMES PUBLISHING CO., BATAVIA, N. Y.
5-16-57-20

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 222

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

BENNE KATZ, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 26289

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

BENNE KATZ, ALFRED FINKEL, AND MURRY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY, Respondent

On Petition for Enforcement of an Order of the National Labor Relations Board

Appendix to Respondent's Brief—Filed November 14, 1960

[fol. 285] BEFORE THE NATIONAL LABOR RELATIONS BOARD SECOND REGION

[1] Stenographic Transcript of Testimony at Hearing of January 28, 1959.

* * * * * * *

[3] COLLOQUY

* * * * * * *

[4] Trial Examiner: Gentlemen, in making your objections to the introduction of evidence, I wish you would make them as specific as possible. However, it will not be necessary for you to take an exception to any ruling made by the Trial Examiner during the course of the hearing, as you have an automatic exception. If you have any exhibits to offer, they should be offered in duplicate, unless some reason is given why that cannot be done, in which event I will rule on each such occasion.

You may proceed, Mr. Weissman.

OFFER IN EVIDENCE

Mr. Weissman: At this time I would like to offer in evidence as General Counsel's Exhibit No. 1 the following formal documents:

1-A, the charge against the employer, signed by J. Lawrence Ramist, dated April 16, 1957;

1-B is the affidavit of service of the charge, signed by John Keoghan, subscribed and sworn to before Benjamin Solomon, dated April 18, 1957. Attached to 1-B is a postal register receipt showing service of said charge;

1-C is the complaint and notice of hearing, signed by [5] Samuel M. Caynard, Acting Regional Director, National Labor Relations Board, dated September 8, 1958;

1-D is the affidavit of service of the complaint and notice of hearing, signed by Ronald H. Croner, subscribed and sworn to before Nettie S. Levine, September 9, 1958, together with the postal registry receipt showing service of the complaint;

[fol. 286] 1-E is the answer of the respondent, dated September 12, 1958;

1-F is an order rescheduling hearing, signed by Benjamin B. Naumoff, Acting Regional Director, dated October 7, 1958;

1-G is the affidavit of service of order rescheduling hearing, signed by Fred Brissman, subscribed and sworn to before Nettie S. Levine on October 7, 1958, together with the postal registry receipts;

1-H is a telegram sent to the parties rescheduling the hearing from November 24 to December 22, and attached are receipts of delivery from Western Union;

1-I is a request for a bill of particulars, signed by Charles W. Newmark, dated November 19, 1958;

1-J is an opposition to motion for bill of particulars and respondent's request to examine pre-hearing statements of witnesses, signed by Aaron Weissman, counsel for the General Counsel, dated December 2, 1958;

1-K is an order signed by Eugene E. Dickson, Trial [6] Examiner, dated December 9, 1958, an order for a bill of particulars;

1-L is the bill of particulars, signed by Aaron Weissman, counsel for General Counsel, dated January 5, 1959;

1-M is an affidavit of service of bill of particulars, signed by Fred Brissman, dated January 5, 1959, together with the postal receipts showing service of said bill of particulars;

1-N is a telegram to the parties postponing the hearing from December 22 to January 27, together with receipts from Western Union showing delivery of said telegram;

1-O is another telegram rescheduling the hearing from January 27 to January 28, together with the receipts from Western Union showing delivery.

I offer General Counsel's Exhibit 1 into evidence.

Trial Examiner: 1-A to 1-O?

Mr. Weissman: The last one is 1-O, that's correct.

[fol. 287] Trial Examiner: Is there any objection?

Mr. Raphael: No objection.

Trial Examiner: It may be received.

* * * * * * * *

Mr. Weissman: Mr. Trial Examiner, at this time I would like to take note of the fact that in the respondent's answer, [7] paragraphs 1, 2, 3, 4, 5, 6 and 8-A were not answered, and therefore admitted.

With respect to paragraph 7, which concern the appropriateness of the unit, I note that the respondent denied this paragraph. I wonder whether this was not an inadvertent error, inasmuch as the respondent had agreed to this unit in a consent election.

Trial Examiner: I was going to raise that question myself after examining the pleadings.

You admit the certification of the union as the appropriate representative in the unit described in paragraph 7. You do that by admitting paragraph 8-A, but yet you have denied paragraph 7, which describes the unit.

Mr. Raphael: The reason for that, I think, Mr. London, as the evidence adduced in the hearing will develop, is that while that is true that was a certification of the Board order, following that, in the long negotiations that ensued between the parties, there were discussions in which we contend that the parties more or less came to some understanding that some of these classifications were not to be considered if collective bargaining agreements were arrived at. In other words, it is not illegal for a union to

say to an employer, "While we are certified to such and such a unit, we are perfectly satisfied to delete some classification of that unit."

Trial Examiner: What I am inquiring about at this time is [8] do you challenge that allegation contained in paragraph 7 as constituting the appropriate unit. Do you challenge that allegation?

[fol. 288] Mr. Raphael: We do at this time.

Mr. Weissman: At this time I wonder whether we can have a recess for the purpose of attempting to work out certain stipulations.

Trial Examiner: All right. Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Weissman: Are you interested in an opening statement?

Trial Examiner: If you think it will add anything to the pleadings, I will be glad to hear you.

Mr. Weissman: The General Counsel believes that the facts in this case are fairly simple and uncomplicated and are alleged fully in the complaint. It is the General Counsel's contention that the charging party was certified for an appropriate unit and that during the certification year, and while bargaining was in process, the respondent unilaterally changed the terms and conditions of employment relating to sick leave and wage rates and also aided and assisted employees in repudiating Local 66 as their bargaining agent, and furthermore publicized, sponsored, approved, permitted, attended and participated in meetings of employees on its premises. In addition, it [9] alleges that the employer engaged in individual bargaining with employees.

This is the sum total of our complaint and our allegations.

Trial Examiner: Proceed.

Mr. Weissman: At this time I would like to call to the stand J. Lawrence Raimist.

[fol. 289] J. Lawrence Raimist was called as a witness on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

. . . . . .

[19] Q. Can you tell us what the discussions were about?

Mr. Raphael: That is objected to as incompetent and immaterial.

Mr. Weissman: Mr. Trial Examiner, these meetings and conferences that took place prior to the signing of the consent agreements and subsequent certifications will point up the reasons behind the subsequent negotiations which took place afterwards. Without these discussions, the later negotiations just don't make sense. I think it is imperative that we get the entire story of how it developed.

Trial Examiner: What general subject does it deal with?

Mr. Weissman: The general subject that I am trying to bring out is the agreement to meet collectively after the consent agreements and the elections and the certifications.

Trial Examiner: Is there any need for that testimony in view of the fact that you have a certified union here? It all imposes that duty upon an employer who has employees that are represented by a collective bargaining representative which the [20] Board has certified.

The objection is sustained.

. . . . . .

[21] Q. When you received your certification for the respondent and the five other companies, did these negotiations change in character?

Mr. Raphael: That is objected to.

[fol. 290] Mr. Weissman: I withdraw the question.

Q. Were the negotiations suspended?

Mr. Raphael: I object to that question as being incompetent. As to the form of the question, what he means change in character, I don't know what he means by that.

[22] Mr. Weissman: I would like to restate the question, if I may.

Trial Examiner: Go ahead.

Q. Mr. Raimist, at the time the petitions were pending, the other petitions were pending, before the National Labor Relations Board, were the Aetna and American Steel Buck Corporations suspended?

Mr. Raphael: I am going to object to that question as immaterial. I can't see the relevancy of it.

Mr. Weissman: Mr. Examiner, again discussing the question of negotiations, I am trying to give the entire picture to show how many companies were involved, which companies were involved, and try to develop this thing in a forthright manner and get a full picture of what is going on. The question of these two companies is important only because it reflects on the later negotiations.

Trial Examiner: The objection will be sustained. You may go into any negotiations in which this respondent participated. As I understand the last question you asked, there were negotiations pertaining to other companies.

Mr. Weissman: Mr. Examiner, the reason I asked the question is to lead up to a further question, which would indicate that these companies also were involved in the collective negotiations at least four times.

[fol. 291] Trial Examiner: I will adhere to the ruling. Proceed.

• • • • • • •

[36] Q. Was there any discussion at this meeting with respect to wage negotiations?

A. Wage negotiations were agreed to—that is, wages were separated from rates of pay classifications—before the consent stipulations were entered into for the elections to be negotiated individually with each company.

Mr. Raphael: I am going to object to that as irresponsive and move to strike it. His question was about the discussions at this meeting. His answer is irresponsive, I submit.

Mr. Weissman: I will accept that.

Trial Examiner: All right. The answer will be stricken.

• • • • • • •

[40] Q. Is that the position that was taken in your letters of July 11th and July 19th to Williamsburg?

A. That is correct.

Mr. Raphael: I am going to object to that question as incompetent and immaterial. I object to the form of the question.

[41] Trial Examiner: We have the letters in evidence.

Mr. Weissman: I withdraw the question. The letters are in evidence and they will speak for themselves.

Trial Examiner: Yes.

By Mr. Weissman:

Q. Mr. Raimist, at the next conference——

Mr. Raphael: Excuse me. Before we get to the next conference, there have been three exhibits marked for identification. May I look at them, please? They are Exhibits 11, 12 and 13.

[fol. 292] Mr. Weissman: Yes.

(Short pause.)

• • • • • • •

[48] Mr. Weissman: May we go off the record for a moment?

Trial Examiner: Yes.

(Discussion off the record.)

Trial Examiner: We will recess until 1:45.

(Whereupon, at 12:10 p.m., a recess was taken until 1:45 p.m.)

[49] Afternoon Session

Trial Examiner: The proceeding will be in order.

• • • • • • •

[56] Q. Mr. Raimist, did it come to your attention approximately March 11th or 12th, 1957 that there had been some changes in sick leave at the Williamsburg Company?

Mr. Raphael: I am going to object to the form of the question. The question presupposes a state of facts and it is a very suggestive question.

Trial Examiner: The objection is sustained.

Q. Mr. Raimist, did you have an exchange of letters with the [57] respondent during March of 1957?

A. I did.

Q. In that exchange of letters did you make an objection——

Mr. Raphael: No. I am going to object to the form of that question. If you have a letter, the letter should be offered.

[fol. 293] Mr. Weissman: I ask the company to produce the letter of March 15, 1957, which was subpoenaed.

Mr. Raphael: We will take your copy, if you have it.

Mr. Weissman: Inasmuch as I don't have one, may I have the original?

Mr. Raphael: We only have a carbon copy.

This letter doesn't even have a signature.

Mr. Weissman: Where is the original?

Mr. Raphael: I don't know. I will tell you where it might be.

Don't put this down.

Trial Examiner: If the original was subpoenaed and it is available, produce it.

Mr. Raphael: We don't have the original. We have no signed letter. It appears from a copy of the letter that the original was sent to the National Labor Relations Board, Case No. 2-RC-8148, and another one sent to the New York State Board of Mediation. The only copy that is here is the one that was sent to me as the company attorney. But the original [58] we don't have. I am willing to waive the question of form. I will concede that a letter was sent. This is the only one I have. I thought you would have it.

Off the record.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

By Mr. Weissman:

Q. Mr. Raimist, do you recall sending a letter to the respondent dated March 15, 1957?

A. I do.

Mr. Weissman: Please mark this for identification.

[fol. 294] (Thereupon the document above referred to was marked General Counsel's Exhibit 16 for identification.)

Q. I ask you whether this is the copy of the letter you sent to the respondent on that date?

A. Yes. This is the letter that was sent to Williamsburg, with copies to the National Labor Relations Board and the State Board of Mediation.

Mr. Weissman: Mr. Raphael, can we stipulate that this letter was received and is authentic?

Mr. Raphael: You mean this letter that you have in your hand?

Mr. Weissman: Yes.

Mr. Raphael: May I take a look at it?

Mr. Weissman: Yes (submitting.)

[59] Mr. Raphael: Yes. I will stipulate that that is a copy of the original which was sent to somebody. We didn't receive the original. We received a copy, too.

Mr. Weissman: But you do stipulate you did receive a copy?

Mr. Raphael: We received a carbon of a letter which purports to be a true copy of what you have just shown me, namely, Exhibit 16 for identification.

Mr. Weissman: I now offer Exhibit 16 for identification into evidence.

Mr. Raphael: Objected to as self-serving.

Mr. Weissman: Mr. Trial Examiner, this letter is part of an exchange of letters from the union to the respondent and back from the respondent to the union, in addition to which it is a letter which objects to certain acts that the company had taken. There are cases which concern themselves with the question as to whether the union objected [fol. 295] to acts of the company with respect to changes in working conditions. I think it is important, therefore, that the union's objection be put into evidence.

I also point out that I intend to put in the response from the company as the next exhibit and that the response is only understood with respect to this particular letter, because it is in response to this letter.

Trial Examiner: Can it be stipulated a copy of this letter [60] was received by the respondent on or about March 15, 1957?

Mr. Raphael: It will be so stipulated.

Trial Examiner: The objection is overruled and it may be received.

* * * * * * *

Mr. Weissman: Mr. Raphael, may we have a stipulation that this is authentic?

[61] Mr. Raphael: Mr. Weissman, I have not objected to the letter. I don't know what more I can do for you, sir.

Mr. Weissman: Mr. Raphael, do you have the original of the March 21st letter which was subpoenaed?

Mr. Raphael: I will take your copy, Mr. Weissman. Ours is all scribbled up. I would gladly give it to you, but I would have to start erasing.

Mr. Weissman: I ask that this letter be marked for identification as General Counsel's Exhibit 18.

(Thereupon the document above referred to was marked General Counsel's Exhibit 18 for identification.)

By Mr. Weissman:

Q. Mr. Raimist, did you send a letter to the respondent in response to the respondent's letter dated March 16, 1957?

A. I did.

[fol. 296] Q. I show you General Counsel's Exhibit 18 for identification and ask you whether this is a copy of the letter which you sent to the respondent on that date.

A. That is.

Mr. Weissman: Mr. Raphael, may we have a stipulation that this is a true copy of the original which is in your possession?

Mr. Raphael: It is conceded, sir.

Trial Examiner: That was received on or about the date it bears?

[62] Mr. Raphael: Correct.

Mr. Weissman: I offer General Counsel's Exhibit 18 into evidence as General Counsel's Exhibit 18.

Mr. Raphael: Mr. Trial Examiner, I think you will find that this objection I am making to the self-serving character of this letter is not a frivolous one. I would appreciate it if you carefully examine the contents. This already is more an exhortation in the melodramatic vein than it is an

answer to our letter, Exhibit 17, and I don't think it is a proper type of a letter to be received in evidence. The fact that it purports to be a response to our letter does not make it eligible to be received in evidence if it has a long diatribe contained therein which I don't feel has the least bit of pertinency to this case.

Mr. Weissman: Mr. Trial Examiner, I am offering this for two reasons. One is to round out the exchange of letters. Secondly, there is a letter from the company in response to this letter which in my opinion incorporates damaging admissions. I am interested in introducing the company letter, but in order to do so I would like to show that there was a letter from the union to the respondent which was responded to.

[fol. 297] Mr. Raphael: All I can say in answer to that, Mr. Trial Examiner, is that error begets error, but the first error certainly should not beget the second error so as to clutter up this record with what I consider to be wholly incompetent [63] kind of exhibits.

Mr. Weissman: Mr. Raphael, of course, speaks for himself. I am introducing this letter, as I stated, for I think pertinent reasons.

Trial Examiner: I will withhold ruling on this until I see what follows.

Mr. Weissman: I request this letter dated March 22nd, 1957, from Alfred Finkel to Local 66, attention Mr. Raimist, be marked as General Counsel's Exhibit 19.

(Thereupon, the document above referred to was marked General Counsel's Exhibit 19 for identification.)

By Mr. Weissman:

Q. Mr. Raimist, did you receive a letter from Mr. Finkel in response to your letter dated March 21?

A. I did.

Q. I show you General Counsel's Exhibit 19 for identification and ask you whether this is the letter that you received?

A. Yes, this it is.

Mr. Weissman: I offer this letter in evidence.

Mr. Raphael: No objection. However, I will look at it just to see if it is what we got.

Mr. Weissman: Here (submitting.)

Trial Examiner: The objection to 18 will be sustained. Exhibit 19 will be received.

(The document heretofore marked General Counsel's Exhibit 18 for identification was rejected.)

[64] (The document heretofore marked General Counsel's Exhibit 19 for identification was received in evidence.)

[fol. 298] Mr. Weissman: Mr. Raphael, I subpoenaed a letter dated January 26, 1957. Do you have that letter, the original of that letter?

I ask that this be marked for identification as General Counsel's Exhibit 20.

(Thereupon the document above referred to was marked General Counsel's Exhibit 20 for identification.)

Mr. Raphael: I will ask for your indulgence for just a second. I want to examine it.

Trial Examiner: All right.

Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Raphael: I am going to object to the offer of this exhibit on the ground that it is immaterial and irrelevant, and if it is the purpose of this exhibit to charge an unfair practice, it has not been alleged in the pleadings, it is not embraced within the framework of the complaint, or the bill of particulars, and is therefore inadmissible.

Mr. Weissman: Would Mr. Raphael wait until I ask the questions and then make his objection?

Mr. Raphael: Could you for the record tell the Trial [64] Examiner what the purpose of this letter is? May we know at this time what the objective of this letter is?

[65] Mr. Weissman: May I ask the witness first whether he recognizes the letter and knows whether it was sent from his office?

Trial Examiner: Yes.

By Mr. Weissman:

Q. Mr. Raimist, I show you General Counsel's Exhibit 20 for identification and ask whether this letter, of which you are now holding a copy, was sent to the respondent under your supervision?

A. It was.

[fol. 299] Mr. Weissman: I now offer General Counsel's Exhibit 20 into evidence.

Mr. Raphael: You have offered it.

Trial Examiner: No. It was just for identification before.

Mr. Raphael: I am sorry. I won't restate my objection, then.

Mr. Weissman: I would like at this time to tell you why I think it should go in.

Trial Examiner: Let me read it, first.

Mr. Weissman: Yes.

(Short pause.)

Trial Examiner: All right.

Mr. Weissman: We are not making any allegation that the contents of the letter are in themselves an unfair labor practice or even that they have been necessarily pleaded in the [66] pleadings. But in General Counsel's Exhibit 17, which is the letter from Mr. Finkel to Mr. Raimist, Mr. Finkel states that he has not seen or heard from the union since November 1, 1956, except for the meeting on December 5th. I am simply putting this letter into evidence or offering it into evidence to show that there was a contact other than the dates which Mr. Finkel stated in his letter.

Mr. Raphael: If that is the purpose of that, I think it is wholly immaterial, because it has no bearing on the case. What difference does it make what Mr. Finkel said? The fact of the matter is that we did in fact bargain with the union after the letter of January 26th. We did meet with them at the State Mediation Board on several occasions in March—in fact in March. Therefore we must come to some facetious result and suppose that every word meant exactly what it was written to be.

[fol. 300] Mr. Weissman: Mr. Raphael, if you are prepared to stipulate at this time that the time interval is

not in any way a defense to the company's actions in changing its sick leave provisions, then I will be prepared to withdraw this letter.

Mr. Raphael: I think it is a little unreasonable for you, Mr. Weissman, to ask me to stipulate to something like that. I can't see how that enters into this picture. Are you bargaining with me for me to withdraw an objection and [67] for me to give you my clients case?

Mr. Weissman: No. I am attempting to point out the relevancy of this letter.

Mr. Raphael: I will make my objection, Mr. Trial Examiner, but I don't want to belabor the objection.

Trial Examiner: It may be received in evidence.

(Thereupon the document above referred to was received as General Counsel's Exhibit 20 in evidence.)

Mr. Weissman: I now ask that this letter dated February 5, 1957, from Sidney O. Raphael to Howard C. Huck of Local 66 be marked for identification as General Counsel's Exhibit 21.

(Thereupon the document above referred to was marked General Counsel's Exhibit 21 for identification.)

By Mr. Weissman:

Q. Mr. Raimist, do you recall receiving a response to the letter of January 26th, which was sent from your office to the respondent?

A. Yes.

Q. I show you General Counsel's Exhibit 21 for identification and ask you whether this is the response to the January 26th letter?

A. Yes.

Mr. Weissman: I offer this letter in evidence for the same reasons as the prior letter.

[fol. 301] Mr. Raphael: No objection.

[68] Trial Examiner: It may be received.

(The document heretofore marked General Counsel's Exhibit 21 for identification was received in evidence.)

* * * * * * *

[84] Q. What you are stating, therefore, is that there were no specific discussions as to specific provisions at the meeting?

[84-A] Mr. Raphael: I am going to object to the form of the question. The witness' answer speaks for itself.

Trial Examiner: Sustained.

• • • • • • •

[91] Stenographic Transcript of Testimony at Hearing of January 29, 1959

[92] Proceedings

Trial Examiner London: The proceeding will be in order.

J. Lawrence Raimist resumed as a witness for and on behalf of the General Counsel, and having been previously duly sworn, was examined and testified further as follows:

Cross-Examination:

By Mr. Raphael:

• • • • • • •

[94] Q. Would those benefits include merit increases that they had received in the past as a pattern of some particular company?

[fol. 302] Mr. Weissman: I will object to this testimony. I think it is competent to ask questions with respect to discussions, but not with an individual's intentions. I don't think the intentions are important.

Mr. Raphael: I am asking him for the meaning of this clause. That is part of your record, that is your case. You sent us a letter. I want to find out what the man who wrote the letter meant.

Trial Examiner: What he said, yes.

Mr. Raphael: What did he mean by what he said?

[95] Trial Examiner: I assume the letter speaks for it-

self. If it is not clear and he expressed what his intent was at a meeting, that is one matter; but on this it was disclosed, and I don't see how it is material at this point.

Mr. Raphael: What do you do about the objection, Mr. Examiner?

Trial Examiner: I sustain the objection.

By Mr. Raphael:

Q. Was Note I to General Notes ever discussed at the meetings? Did you tell the people present what you meant by Note I?

A. Yes.

Q. What did you tell them? Tell us when and where you told them, and on how many occasions.

A. At each of the meetings where the notes were discussed, it was agreed that once the contracts were executed after a contract would be reached, that no employee as a result of the signing of such a contract would lose any of the benefits which he had been receiving previously.

Q. Were those previous benefits ever discussed or outlined by you to the employers?

A. No, because——

Q. I am just asking you yes or no.

Trial Examiner: He said "No."

Mr. Raphael: I move to strike out everything after the word "no."

[fol. 303] By Mr. Raphael:

[96] Q. You recall testifying about a meeting of November 1st?

A. That is correct.

Q. Is that correct?

A. That's right.

Q. You testified that you had no notes at that meeting; is that right?

A. I didn't testify that.

Q. Do you have notes of the meeting of November 1st?

A. I have. I simply didn't refer to them.

Q. Do you have notes of that meeting?

A. I have.

Q. May I see them, please?

The Witness: Do I have to show him?

Mr. Weissman: I object to that.

Mr. Raphael: I call for the production of the notes that this witness has with him here at the hearing pertaining to the meeting of November 1st, and I ask you, Mr. Examiner, to direct this witness to make them available to me.

Trial Examiner: No, I don't think that I shall do that. The witness says he didn't use notes when he was testifying concerning that meeting.

By Mr. Raphael:

Q. Can you tell us who was present at the meeting of November 1st?

A. Mr. Mittleman, Mr. Graine, Mr. Finkel and Mr. Raphael.

[97] Q. Can you tell us whether anybody else was present?

A. The union committee.

Q. Can you tell us the names of those people who were present?

A. Myself, Mr. Folley, Charlie Kay, Appel.

Q. Anybody else?

A. I don't recall whether there was a fourth committee man there or not.

Q. Will you look at your notes and tell us how many in addition to those you said were there were there, being that you testified you didn't recall? Please look at your notes.

Trial Examiner: If you need your notes, you may refer to them.

[fol. 304] A. The union was Charlie Kay, Folley, Appel, Osinski and Zimmerman and myself.

Q. Did you refer to your notes to help you to refresh your recollection to answer the last question?

A. Yes.

Mr. Raphael: I ask that the witness be directed to make available to me the notes that he looked at in order to refresh his recollection to answer the last question——

Mr. Weissman: I will object——

Mr. Raphael: —and I ask that they be marked for identification.

[98] Mr. Weissman: —unless he confines himself to that portion which the witness has used to refresh his recollection.

Trial Examiner: It is apparent he did use it for that purpose at least. It may be marked for identification as Respondent's Exhibit 1 for identification.

(The document above referred to was marked as Respondent's Exhibit 1 for identification.)

Mr. Weissman: Mr. Examiner, I wish to renew my objections at this time to Mr. Raphael reading any part of that note except for the names.

Trial Examiner: It will be difficult for me to control that.

OFFER IN EVIDENCE

Mr. Raphael: I will offer this in evidence.

Mr. Weissman: I object to it being offered in evidence.

Trial Examiner: For what purpose is it being offered?

Mr. Raphael: It is being offered to show by this witness's testimony that those present asked at the end of the meeting for individual wage negotiations. This is in the witness's handwriting, and I think it is a very important piece of evidence in this case, in my humble opinion.

[fol. 305] Mr. Weissman: Does Mr. Raphael mean to imply that this contradicts some testimony?

Mr. Raphael: I am merely answering the Trial Examiner's [99] question.

Mr. Weissman: I still make my objections. I don't think it is competent for the introduction of this into evidence at this time.

Trial Examiner: Overruled. It may be received.

(The document previously marked for identification as Respondent's Exhibit 1 was received in evidence.)

The Witness: Will I get a photostatic copy for my own records? That is the only copy I have.

Trial Examiner: You will make the same arrangements that were made with respect to other exhibits: photostats may be substituted for the originals, and the originals returned to the witness.

Mr. Weissman: Mr. Examiner, after reading this document I am certain there was no contradicted testimony——

Mr. Raphael: I move to——

Mr. Weissman: —when Mr. Raimist testified.

Mr. Raphael: I move to strike the statements of counsel as they are obviously a summation of this case.

Trial Examiner: It is not testimony, and the exhibit is here and the testimony is also here, and I will determine whether or not it is inconsistent or not.

By Mr. Raphael:

Q. You testified at yesterday's hearing that following the proposal made by those present at the [100] meeting of November 1st for individual wage negotiations, that [fol. 306] you, on behalf of the union, turned that offer down. Is that correct?

A. I don't quite understand your question.

Mr. Raphael: May I have my question read?

(Question read.)

The Witness: In regard to meeting as a group, I replied that since the companies were going back on their negotiations one way and now were stalling for time, that the only thing to do was that I was going to demand individual negotiations, which I started doing the next morning.

By Mr. Raphael:

Q. Let me read you an answer that was made by you and tell us whether you did, in fact, make this answer to the following question. Reading at the bottom of Page 49 of the transcript, the question put to you by the Board counsel:

"Can you tell us what occurred at this meeting with respect to wages?

"Answer: At this meeting—I am trying to think. There was a wage offer, but we came to this meeting and we were supposed to receive a package proposal based on the promise made at a previous meeting, which was on or about the 24th of October. When we got there—it was a seven o'clock meeting, and we waited until 7:30, when

they got together, and then they adjourned in order to prepare their package. [101] It was about nine o'clock and they came out and presented the following package:

"They said they were ready to submit a cents-per-hour increase covering wages, holidays and sick leave. I stopped them. I told them that the general wage negotiations, a general wage increase were to be negotiated on an individual company basis and per previous agreements reached. In fact, as a result of which agreements the stipulation for consent elections were signed. We turned it down. [fol. 307] We told them we didn't even want to hear how many cents per hour because that was out of order. They then recessed again.

"They came back into conference after about a half-hour or so recess, and Mr. Mittleman spoke for the group at this time. He stated that they now feel that inasmuch as we are not getting anywheres that we should recess the association negotiations and instead we should start bargaining on an individual company basis for wages, and after the individual wage negotiations with each company were completed that then we should resume the association negotiations.

"I was the spokesman for the union committee and I naturally turned it down."

Did you make this answer that I have read to you to the question that I read to you?

A. Yes.

Mr. Weissman: Mr. Examiner, at this time I will object [102] to this whole line of questioning unless there is some indication of where Mr. Raphael is going. I don't think it is material to this particular case.

Trial Examiner: Objection is overruled.

By Mr. Raphael:

Q. You testified yesterday in response to questions put to you that at various meetings, the dates and times of which you weren't able to recall, you spoke to Mr. Finkel about his doing things which were interfering with the union's position.

Do you recall such testimony being given?

A. Yes.

Q. Can you show us where in any of your notes which have been submitted here as exhibits in this case that any record of those conversations appears?

A. I testified that I had mentioned that to Mr. Finkel or said those things to Mr. Finkel at the meetings, at certain meetings. I believe I also testified that this was not part of the record, that I mentioned the facts particularly about the [fol. 308] merit increases, period. There is nothing in the record. In fact, I stated there was nothing in the records.

Trial Examiner: Do you mean your notes?

The Witness: My notes. It is humanly impossible to write everything down while you are talking and listening to others.

Mr. Raphael: I move to strike out the latter portion [103] of the answer, especially those words "It is humanly impossible."

Trial Examiner: It will be stricken.

By Mr. Raphael:

Q. Now, you testified that there were negotiations which were being conducted contemporaneously with Aetna Steel; is that correct?

Mr. Weissman: I object to this line of questioning with respect to Aetna because I don't think it is material to the issues at hand.

Trial Examiner: Objection overruled.

By Mr. Raphael:

Q. Did you so testify?

A. Yes.

Q. Did you, in fact, at one of the meetings at the State Mediation Board, respecting which meetings you testified yesterday, submit to those present, including Mr. Finkel representing Williamsburg, the form of agreement which you said you had concluded with the Aetna Steel Products Company, and said to them in words or substance that this was the form of agreement that you asked or demanded that be signed on behalf of those employers present at that Mediation meeting?

Mr. Weissman: Mr. Examiner, the facts as adduced yesterday on direct examination concerned Aetna only with respect to a period of time in December and explained why negotiations with other companies were being held up. The Aetna contract and the negotiations at Aetna have nothing to [104] do with this case and there is nothing in the [fol. 309] record on direct which permits Mr. Raphael to go into this question.

Trial Examiner: I think the question as now framed by Mr. Raphael might be material. Certainly, it is part of the cross examination.

The objection is overruled.

Mr. Raphael: Do you remember the question?

The Witness: I would like to have it reread first.

(Question read.)

A. Part of what you ask in the question is so and part of it is not so.

Q. Which part is so and which part is not so?

A. I didn't submit these proposals which were a copy of the Aetna. They were submitted to the employers by Mr. Gamser of the New York State Mediation Board, to whom copies were supplied, and the union's proposals for submission, which are a revision of the union's original demands, having dropped pension and other items and reduced the amounts.

At the conference that you speak of where those proposals were brought forth and discussed, we did say that we would like to use these as the proposals for negotiations. Those were our new proposals.

Q. Can you recall at this time, or do you know at what meeting it was at the State Mediation Board that this agreement or this form of agreement of Aetna Steel with your union [105] was presented?

A. March 29th. If you want to, I would like to verify it.

Q. Would you please?

A. I think I can.

Mr. Weissman: What year?

The Witness: 1957.

Mr. Raphael: Mr. Examiner, I trust it is all right with you if I take my jacket off?

Trial Examiner: That is all right.

[fol. 310] The Witness: I would say that is so because some of the items discussed could only have come up as result of the contents.

By Mr. Raphael:

Q. Did you make any statements to those present—that is, the employers present—at that March 29th meeting at the State Board respecting the position of your union concerning the format of that agreement as being the format of any collective agreement for any of the members of the industry?

A. We tried to sell them that idea.

Q. Do you have with you here at the hearing that form of agreement which was in fact submitted to the employers at this State Mediation Board meeting on March 29th?

A. May I correct you? It was submitted to the employers by the New York State Mediation Board representative prior to this meeting.

[106] Q. Who submitted it to the State Mediation Board?

A. Mr. Gamser asked if we had copies and we sent them to him, and he transmitted to the employers.

Q. When you say "we," you are referring to Local 66?

A. Yes.

Q. So in fact Mr. Gamser received those forms of agreement that you had with Aetna Steel from your office for distribution to the employers?

A. With the Aetna name crossed out. Actually, Mr. Gamser had the original because he had negotiated or participated in the mediation for the negotiation of this contract.

Q. But you sent them down duplicate forms; is that correct?

A. Correct; at his request. I have one copy here.

Q. I have one which is scribbled up.

A. So is mine.

Mr. Raphael: It is not too badly scribbled up (handing documents to Mr. Weissman).

By Mr. Raphael:

Q. Apart from the pencil notations and various scrib-
[fol. 311] blings on there, does this appear to you to be a copy of the format of the agreement which you testified copies were sent down to the State Mediation Board for distribution in turn to the other employers prior to March 29th, 1957?

A. Yes.

Mr. Raphael: I will offer it in evidence.

[107] Trial Examiner: That is Respondent's 2.

Mr. Weissman: No objection.

(The document above referred to was marked as Respondent's Exhibit 2 and was received in evidence.)

By Mr. Raphael:

Q. Now, this striking out of the name of the employer at the top of the first sheet of Respondent's Exhibit 2, that is the name of Aetna Steel that was erased; is that correct?

A. That is correct.

Trial Examiner: I take it you want that interlineation to remain as part of the exhibit?

Mr. Raphael: Yes, Mr. Trial Examiner.

It is called to my attention at this time, Mr. Trial Examiner—I am very happy to supplement the record so that we can have a clear picture of what happened—that various other deletions and delineations which appear in Exhibit 2 of the Respondent were likewise deleted prior to the time that the format of the agreement was sent down to the State Board, and I refer specifically to the names of the various divisions of Aetna Steel, which would be Article V—no; Article IX, Subdivision 3, and Article XI, Subdivision 6, and Note III of the General Notes, Subdivision 5, and the name of the employer on the last sheet of the exhibit.

All other writings and scribblings or deletions, if any wouldn't have been made in the office of Local 66.

[fol. 312] By Mr. Raphael:

[108] Q. Now, at this meeting of March 29th at the State Board following the presentation of this Respondent's Exhibit 2 to the employers present, including Williamsburg Steel, was there some discussion had about this form of agreement? Did you say anything to the employers about it?

Mr. Weissman: Mr. Examiner, I think that that question is not specific enough for the witness to answer.

Mr. Raphael: I will reframe it.

By Mr. Raphael:

Q. Did you say anything to the employers at the meeting of March 29th about Respondent's Exhibit 2, and if so, please tell us what you said?

A. I think in the discussions I must have repeated myself several times, stating that the objective of the union was to see if we can get uniform contracts, and we thought this would be a good proposal to establish uniformity.

Q. Was there any statement made by either the representative of Williamsburg Steel or any other employer about their attitude towards your statement which you have just told us about respecting the uniformity of agreement?

A. Yes.

Q. Tell us what was said and by whom, if you can recall.

A. Mr. Finkel tried to give us a historical explanation of why Aetna didn't—let me rephrase that: historical statement to the effect that Aetna never followed a pattern [109] of the rest of the industry and that the companies present each wanted to have things done differently than Aetna.

I know I did ask the question, "How come Aetna was in the association?" That was kind of shunted aside, and by going back to the discussions—I have some notes of some of the statements, if you want me to refer to what Mr. Finkel said.

[fol. 313] Q. If it will help you to refresh your recollec-

tion by looking at the notes which are marked as an exhibit in this case, of course.

A. It is not refreshing. I write the statements that Mr. Finkel made.

Q. Are they contained in the exhibit that was offered here as to the minutes of that meeting?

A. You are talking of November 3rd?

Q. No; of the meeting at the State Board held on March 22nd. That is exhibit 22.

A. Exhibit 22?

Mr. Weissman: For identification.

Mr. Raphael: I said for identification.

The Witness: Yes. I have that marked right on here.

By Mr. Raphael:

Q. May I see that?

A. Certainly (handing document to Mr. Raphael).

Q. Are the statements contained in this, by Mr. Finkel, which you are about to testify to, in Exhibit 22 for [110] identification? You were about to read them?

A. That's right.

Offer in Evidence

Mr. Raphael: I will offer this exhibit in evidence.

Mr. Weissman: For what reason?

Mr. Raphael: For the reason that they set forth the statements which in fact Mr. Finkel did make to Mr. Raimist and which Mr. Raimist made to Mr. Finkel, and the statement further contradicts some of the testimony given on direct examination by this witness, in my opinion, and therefore it is relevant.

Besides, I suppose it would come under the shop book rule, a contemporaneous recording of a meeting according to this customary habit of Mr. Raimist to make notes, and I think it is competent under the shop book rule. [fol. 314] Mr. Weissman: I am going to object to this document going into evidence. I don't think this comes under the shop book rule. This is not a record that is kept in the ordinary course of business. Furthermore, I don't think that Mr. Raphael has properly offered this in evidence. He has not laid a background. Mr. Raimist

didn't even refer to these notes with respect to Mr. Finkel's testimony either today or yesterday.

Mr. Raphael: Might I refresh your recollection, Mr. Weissman, and tell you that yesterday you offered Exhibit 22 for identification for the purpose of Mr. Raimist using [111] that to refresh his recollection.

Mr. Weissman: Mr. Raphael, specifically with your question as to what Mr. Finkel stated——

Trial Examiner: It cannot be received to prove what Mr. Finkel said at that meeting, but I think it is otherwise admissible. It is enough for the purpose indicated.

(The document previously marked for identification as General Counsel's Exhibit 22 was received in evidence.)

By Mr. Raphael:

Q. Mr. Raimist, I believe you testified that the first meeting at the State Mediation Board was held on December 1st; is that correct?

A. December 5th, 1956.

Q. Excuse me.

Was that in pursuance to a letter request that you had made to the State Mediation Board to convene a meeting of the employers in the hollow metal industry?

A. It was in connection with my contacting the State Board and telling them that I would like to see some action, otherwise I am going to have trouble with the employees, most of whom wanted us to take some drastic [fol. 315] actions, and I thought perhaps the State Board could do something.

Q. Well, did you write a letter or did you send a telegram to the State Board in pursuance of that, or was it just simply a telephone call that you made?

A. I don't remember at the moment.

[112] Q. In any event, you communicated in some form with the State Mediation Board?

A. I did.

Q. That was prior to the December 5th meeting?

A. Yes.

Q. Did you indicate to the State Board as to who they should call to this meeting?

A. I told the Board that I asked for individual com-

panies and the Board told me that since they were busy on a case he will use his judgment in calling it and he would probably call the first one as a group, even though our request was for individual bargaining, and naturally, once having contacted the Board, I couldn't say no. I don't say "no" to a government agency.

Q. At the December 5th meeting, did you at any time voice any protest or make any objection to the fact that the negotiations at that meeting were being conducted on an association basis instead of an individual basis?

A. At the December 5th meeting, I stated my position and you stated the employers' position, and then there was some discussion, but since we had to go into the conference with Aetna Steel, I don't think this meeting lasted more than an hour and-a-quarter or an hour and-a-half. It was adjourned and Mr. Gamser was to call the next meeting.

Q. With all due respect to you, Mr. Raimist, I don't think [113] you have answered my question.

Mr. Raphael: I would like to have the question repeated to the witness.

Trial Examiner: Read the question.

(Question read.)

[fol. 316] A. Starting with that meeting—at every meeting I made a statement——

Trial Examiner: You may answer that question yes or no? Did you make any protest?

The Witness: I made a statement that this was to be considered an individual company conference and not an association.

By Mr. Raphael:

Q. Did you protest or object to the meeting being conducted on this association form?

A. No. We all sat together, as I explained before.

Q. Your answer is "no"?

A. My answer is yes, because I made it clear at the meeting.

Mr. Raphael: Would you read back the witness's answer? I thought I heard him say "no."

Trial Examiner: I gather from his testimony that he didn't formally say, "I protest." He said he made a statement which he stated for the record.

By Mr. Raphael:

Q. Do you have the minutes of the meeting, Exhibit 15 for identification? Do you have those here?

A. I don't think you will find anything.

[114] Q. Supposing you look at Exhibit 15 while you are up on the witness stand and tell us whether you find any reference to this last bit of testimony which I have questioned you about contained in that exhibit.

Mr. Weissman: The witness has answered the question. There isn't a question of his lacking——

Mr. Raphael: I am testing his memory.

Trial Examiner: He may answer.

A. It says here that "J. L. R."—who is myself—"gave the picture; the S. O. Raphael gave the picture. Then Gamser to call the next conference." That's all the notes that I remember taking. There were certainly some discussions there.

[fol. 317] Do you want to see it, Mr. Raphael?

Mr. Raphael: No. I will take your word for it. May I have Exhibit 26, please?

By Mr. Raphael:

Q. With respect to Exhibit 26, which is companies counter-proposal type of agreement, you testified that the statement was made at one of the meetings at the State Meditation Board that that kind of proposed agreement would be prepared and submitted to Local 66 and the State Board; is that correct?

A. I don't know what you mean by "that kind." I said that "a" proposal.

Q. That's right. What meeting was that in fact stated at?

[115] A. May 1st.

Q. And it is a fact that chronologically the statement about submitting Exhibit 26 came after Respondent's Ex-

hibit 2 had been submitted to the various members of the association at this March 29th meeting; is that correct?

A. That is correct.

Q. You also concede that there was an interlude of approximately three weeks that I was out of circulation due to the fact that I had a serious loss in my family, is that correct, at or about that time, between the end of March and the beginning of May?

A. Yes; you had some problems, yes.

Q. I assume that as soon as it was humanly possible for me to get back in circulation and get a proposed agreement, I did in fact submit it to the State Mediation Board and I did submit it to you around May 1st; is that right?

A. Yes. But if my memory serves me right, you were present——

Q. The last meeting I was present at was the meeting of April 11th; is that correct?

A. April 11th.

Q. Between April 11th and the early part of May, I was out of circulation; is that right?

A. Yes. Mr. Finkel had also gone on vacation. We had [fol. 318] arranged that at the State Board, that there would be no [116] meeting.

Q. You have in Respondent's Exhibit 2, Article XXV, "the most favored nations clause."

Was there ever a discussion at any of the meetings at the State Mediation Board concerning which you testified about this clause?

Mr. Weissman: I will object to this question, Mr. Examiner.

Mr. Raphael: This witness has told us what was stated at these meetings.

Mr. Weissman: Mr. Examiner, the form of the contract was used as a basis towards bargaining. The question as to whether a particular provision is that contract was at all material or had anything to do with the negotiations at hand is another matter.

I submit that this provision has nothing to do whatsoever with the negotiations.

Trial Examiner: Will you read the question, please?

(Question read.)

Trial Examiner: May I see the agreement, please?
The Witness: It is on the back page.
Trial Examiner: Objection overruled.
You may answer.

A. On April 4th, 1957, Mr. Gamser reported to us, after he had gone back to talk to the companies, that this paragraph, [117] or this Article XXV, was acceptable to the employers to put into their respective contracts with us.

Q. Do you have that recorded in your minutes of the meetings?

A. Yes, sir.

Q. Will you show it to us, please?

A. I will be happy to.

[fol. 319] Q. No; the minutes of that meeting of April 4th.

A. That is what I am talking about (handing documents to Mr. Raphael). Here is "A" (indicating), and there is the whole thing.

Q. As a matter of fact, Mr. Raimist, I would like to refresh your recollection.

Isn't it a fact that during the discussions at the meeting of either March 29th or April 4th or April 11th, or thereafter, during the course of those discussions a question was put to you by Mr. Finkel and by some of the other employers to the effect, in substance, that this clause, this "favored nations" clause that was contained in the Aetna Steel contract that you had concluded at or about that time, was a barrier to your negotiating with any other member of the industry an agreement different than that which you had with the Aetna Steel? Wasn't that discussion brought up by somebody present?

A. Well, there was some discussion, and the answer always [118] was that this clause was in there for the protection of Aetna by Aetna, and that Aetna employees didn't control the employees of any of the other companies, and, therefore, if the employees of the other companies chose to select or elect a different contract, the union would have a problem with Aetna.

As a matter of fact, we did, in later contracts which we signed less favorable than Aetna, with Pioneer and Triangle and City Steel.

Q. Didn't you in fact ask me to obtain on your behalf

from Aetna Steel a written waiver or an oral waiver to permit you to do something like that?

A. That's right.

Q. Is it not a fact that without such a waiver that this clause, this "favored nations" clause, in fact is a barrier to your making any agreement with any employer other than containing those terms?

A. No. It simply means that if the contracts were approved, the other employees would have to revert to the [fol. 320] less favorable conditions.

Q. How about the employer, Aetna Steel? Do they have——

Mr. Weissman: He is arguing with the witness. May he confine himself to facts, and then I think there will be no objection to any of the questions.

Trial Examiner: Yes. I think the testimony should be [119] restricted to conversations which took place on that subject, if any.

By Mr. Raphael:

Q. Didn't you in fact state to people at these meetings of March 29th, April 4th and April 11th and other meetings at the Board, didn't you tell them in words or substance that you were unable to give them any conditions other than those which were set forth in Respondent's Exhibit 2 because of the "favored-nations" clause? Didn't you make such a statement, in substance?

A. In substance, no.

Q. What did you say?

A. In my pleas for consideration of the agreement, I said, "It would be a whole lot easier for us if you agree to this format of the contract and if we can get the same terms in an industry-wide agreement, since they are all members of the association," or words to that effect.

Q. Did you, at the meeting of either April 4th or April 11th at the State Board, in words or substance say to those employers present, including Mr. Finkel, that the union rejected the counter proposals of the employer and in fact was voting a strike at that time? Did you make such a statement?

Mr. Weissman: May I hear the question?
Trial Examiner: Yes.

(Question read.)

[120] Mr. Weissman: I will object to that. The testimony with respect to the April 4th meeting is that the parties met in separate rooms.
[fol. 321] Mr. Raphael: This is cross examination. I don't have to accept this witness's statement.
Mr. Weissman: You are starting off with misleading facts.
Trial Examiner: Objection is overruled.

A. Nothing could be done—could have been said, for instance, at the April 14th meeting, since we never saw the employers. We were separated the entire day. Mr. Gamser first met with the employers. Then he came in and gave the union certain information—proposals, that is. Then we asked for information regarding the other items of the proposals——

Trial Examiner: I think you have answered the question.

By Mr. Raphael:

Q. Did you tell Mr. Gamser in words or substance on that day, April 4th, to go back and tell the employers that if there wasn't an agreement on that day that the union was going to vote a strike against these employers? Did you tell him to tell us that?

A. No.

Q. If such a statement was in fact made by Mr. Gamser to the employers, you would say that you had not authorized that statement; is that correct?

[121] A. That is correct.

Q. Did you in fact write a letter to Mr. Gamser and to the State Board about the fact that a strike was to be declared?

A. That night?

Q. No; at or about April 4th, or maybe a day after.

A. (No response.)

Q. Let me show you a photostat of a letter which I have, dated April 8th, but dictated April 5th, 1957, addressed

to Mr. Howard Gamser of the New York State Board of Mediation.

A. Such a letter was sent.

Q. This letter which I have just shown you, dated April 8th, 1957, and in parentheses dated April 5th, 1957— [fol. 322] would you say that is a true copy of an original of this letter which was in fact sent to Mr. Howard Gamser of the New York State Board of Mediation, to the City Steel Door Corporation; Pioneer Fire Proof Door Corporation; Superior Fire Proof Door and Sash Company, Inc.; Triangle Steel Products, and Williamsburg Steel Products Company?

A. Yes.

Q. Do you have the copy in your file of this letter?

A. I have a copy. I don't have it with me.

Mr. Raphael: I have one.

By Mr. Raphael:

Q. I have shown you a photostatic copy and I want to show you a ribbon copy of the same letter which you just acknowledged was the true copy of an original [122] transmitted to the various people whom I have enumerated.

A. That's the one.

Mr. Raphael: I will mark this for identification as Respondent's Exhibit 3.

(The document above referred to was marked as Respondent's Exhibit 3 for identification.)

By Mr. Raphael:

Q. Doesn't this letter in fact refresh your recollection that on April 4th the employees of the five companies whose names I have read off to you a little while ago, including Williamburg Steel Products Company, voted a strike against those companies?

A. That is not the way you had put the question before. You said that at the meeting didn't we say that. This letter shows that after we had reported to the employees that evening what had taken place, the employees voted and the employees placed it in the hands of the steering committee to use their judgment if and when.

Q. Had they voted?

A. Yes, they had voted.

Q. And that meeting that you had on the evening of April 4th was the evening of the very day that you had had this [fol. 323] meeting at the State Mediation Board; is that correct?

A. And at which we made the report from Mr. Gamser's submission of the companies.

[123] Q. This meeting at which you got together with the workers on April 4th at which this strike action was taken, at what time was that meeting held that day, and where was it held?

A. It was held at the union headquarters that evening.

Q. What time?

A. I don't remember exactly whether it was six o'clock or seven o'clock.

Q. Maybe five o'clock?

A. No.

Q. About six o'clock, you say?

A. No; it was in the evening.

Q. Somewheres between six o'clock and eight o'clock?

A. It started somewheres between that time. The employees would have to come from work.

Q. How were they notified to be there, and by whom and when?

A. That meeting had been previously scheduled, and Mr. Gamser knew that there was a meeting which we had to give a report to the employees. In fact, the employers knew that the employees wanted a report, and this was one of the regular scheduled meetings for the receiving of the report of the negotiation committee.

Q. Do you testify now that the employers knew that you were to have this meeting on the night of April 4th?

A. Well, not from first-hand knowledge, but I will say this: We did explain to the Mediator to say there was a [124] meeting and we would like to have as much detail as possible to report, and I am sure that it is humanly impossible for anyone to have a meeting where the employees in the various shops are notified of a meeting without the word being around. That is only human.

Q. Did you not at this meeting with Mr. Gamser on April 4th tell him that this meeting, in fact, was to take place

[fol. 324] on the evening of that very day? Did you not tell him about it?

A. I said that.

Q. Did you not tell Mr. Gamser that one of the objectives of that meeting was to not only pass on the proposals of the employer, but to take strike action?

A. No, sir.

Q. You didn't say that?

A. No.

Q. But by the time you had the meeting of April 11th, concerning which you have testified, this letter, Respondent's Exhibit 3 for identification, had already been mailed by the union and forwarded to Mr. Howard Gamser and all of the employers, including Williamsburg Steel; is that correct?

A. That is correct. That doesn't preclude continuation of bargaining.

Mr. Raphael: I move to strike the latter portion of the answer as not responsive.

[125] Trial Examiner: It may be stricken.

We shall take a five-minute recess.

(Short recess taken.)

By Mr. Raphael:

Q. Mr. Raimist, you will recall that yesterday some reference was made to a letter dated May 21st, 1957, the original of which was purported to have been forwarded to the Architectural Engineering Guild, Local 66, under date of May 21st, and you indicated that you didn't have that letter.

Since that time a notice to produce was served on counsel for the General Counsel, and I wonder whether you have been able to find any trace of this letter.

A. The letter that you refer to, the one yesterday, I have had the girls—in fact, I had the girls working overtime [fol. 325] last night checking through the files again. There is no record of that letter in our office. They couldn't find anything, and frankly that is the first time that I recall seeing it.

I could only say this: That the surest way to ascertain whether we received it or not, or whether it got lost—be-

cause the contents of that letter would certainly get a reply from me—if there is a reply, that would establish the fact of whether we received it.

Mr. Raphael: No further questions.

[126] Re-direct examination.

By Mr. Weissman:

Q. Mr. Raimist, after the November 1st, 1956 meeting, did you make any attempts to contact individual employers for the purposes of bargaining individually?

Mr. Raphael: Objected to as not proper re-direct.
Mr. Weissman: Mr. Examiner——
Trial Examiner: The objection is overruled.

A. I did. The following morning I made calls to all the employers; some of them individually. Some of them I reached, and some of them I couldn't reach by phone. One of them that I did reach was Mr. Finkel on November 2nd, and Mr. Finkel told me that he would meet with us if the arrangements were made through Mr. Raphael; that he would not make the conference, but for me to make the arrangements through Mr. Raphael. So we contacted Mr. Raphael's office.

Q. Then what happened?
A. Mr. Raphael——

Mr. Raphael: When you say "we contacted," what do you mean?
The Witness: I mean I did, the union.
Mr. Raphael: May we have a time fixed?
[fol. 326] The Witness: The first contact was made on the same day that we called Mr. Finkel, which was November 2nd. There were subsequent phone conversations to your office to find [127] out when and where.

By Mr. Weissman:

Q. Was there a conference set up?

A. No. Mr. Raphael was trying to arrange things and I think he had some Court cases, but on November 8th, not having had any replies, I spoke to Mr. Raphael and Mr.

Raphael called me back and he told me he had spoken to the company and that conferences were set up, one for the 14th at the company plant in the afternoon, and one for the following day at his office.

Q. Did you go to the company's plant on the 14th?

A. Yes, I did.

Q. Can you tell us what occurred?

A. When I got there, Mr. Finkel——

Mr. Raphael: I will object. This is not proper re-direct, Mr. Examiner. I am sorry to say this. That is part of the Board's direct case. This is new material.

Mr. Weissman: Mr. Examiner, it was Mr. Raphael that brought up the question of individual bargaining.

Mr. Raphael: I didn't bring up the meeting in November.

Trial Examiner: Objection overruled.

You may continue.

A. (Continuing) I came in and Mr. Finkel acted surprised. He said he wasn't feeling well, he was going home. His desk was full of papers, but he started gathering up the papers together. I asked for my committee, the three employees on [128] the Williamsburg committee, and he said, "No," there was no conference.

He left the room and then he came back. We contacted Mr. Raphael on the phone. When he come back, [fol. 327] he spoke to Mr. Raphael and I spoke to Mr. Raphael, and Mr. Raphael said, "Well, evidently there is some error there," and I wanted to talk to my committee, which I at first was not permitted to do.

Then Mr. Halpern was called in by Mr. Finkel, and Mr. Halpern, he told him that I wanted to see the committee, and I said, "At least for a few minutes so I can tell the boys that they shouldn't think that the union, after making the appointment, was not there," that the union represented them, and that I was not in the habit under our constitution and policy procedures to talk alone, I wanted the committee, but at least let me say something to them.

So Mr. Halpern spoke a bit about classifications; it was unavoidable. Then he finally called the three-man committee in.

Do you want the names?

Q. Mr. Raimist, you spoke about a Mr. Halpern. Can you identify him?

A. Mr. Halpern, his title is chief engineer.

Q. Of Williamsburg Steel Products?

A. Yes.

[129] Q. Did you meet with Mr. Halpern on that day?

A. Just an informal discussion. A meeting was finally agreed to that we would meet the next day to discuss—for a basic discussion of classifications.

Q. Mr. Raimist, with respect to the November 14th date, I ask you again, did you meet with Mr. Halpern?

A. Only for maybe five or ten minutes.

Mr. Raphael: Doesn't that call for a yes or no answer?

Trial Examiner: Yes.

The Witness: Yes.

By Mr. Weissman:

Q. Who called Mr. Halpern in?

A. Mr. Finkel.

[fol. 328] Q. What was the nature of your discussion with Mr. Halpern at that time?

A. The nature was first, Mr. Finkel told him that I wanted to see the committee and was giving final permission for the committee to see me for a few minutes to identify the fact that I was present.

Q. What else?

A. It developed that we had some discussion about the general subject of classifications, and also it was agreed that we would have a meeting the following day at the company plant. This all happened in the conversation, to discuss classifications.

Q. During this conversation did Mr. Finkel make any [130] statement with respect to his position as to individual bargaining?

A. Well, Mr. Finkel stated at this particular—no, not at this time; he did the following day.

Q. Can you tell us what occurred the following day?

A. The following day we received a message at our office, given to me by my secretary, who jots this in the message book, that Mr. Finkel had——

Mr. Raphael: May the record show that the witness has been refreshing his recollection from looking at certain papers.

The Witness: I have no papers.

Mr. Raphael: Then I ask that these papers be put apart so that there will be no question.

By Mr. Weissman:

Q. Just go ahead.

A. The message my secretary gave me was that Mr. Finkel had called off the conference at the company plant for that afternoon and that he was going to send Mr. Halpern over to the union office to discuss classifications with me, and that he was going to do this for the whole group of employers.

[fol. 329] Mr. Raphael: I will move to strike that out on the grounds that this obviously is not a conversation with Mr. Finkel. This is hearsay.

Trial Examiner: It obviously is.

The Witness: Let me follow through.

[131] When I got back to the office, I saw the message and I phoned Mr. Finkel.

Trial Examiner: Tell us about that conversation.

The Witness: Mr. Finkel told me that there was going to be no individual bargaining, that it would be only an association-wide bargaining, and that he would send Mr. Halpern over to speak for the association group on classifications to the union office.

I told them that they were not going to send anybody to the union office, we were not placing ourselves in that position; that if there was any meeting to be held, the committee would have to be present, at least the representative would have to be present, and it should be held in Mr. Raphael's office.

When I hung up I called Mr. Raphael's office on it. Shortly thereafter, we received a telephone call from one of the committeemen, and the committeeman told us——

Mr. Raphael: That is objected to.

Trial Examiner: Sustained.

By Mr. Weissman:

Q. Mr. Raimist, would you please tell us what finally evolved from your conversations with Mr. Raphael?

A. Well, a conference was arranged at Mr. Raphael's office for that evening. I don't mean late evening; it was around four o'clock.

[132] Mr. Raphael: What day was that, please?

The Witness: The 15th.

By Mr. Weissman:

Q. Can you tell us who was present at this conference? [fol. 330] A. At this conference was Mr. Halpern, the chief engineer of Williamsburg, Mr. Appel and Mr. Languilli and myself.

Q. What was the general nature of the discussion?

A. The general nature of the discussion was in connection with classifications.

Q. How long did this conference last?

A. About two hours or a little better.

Q. Commencing with the meeting of December 5th when you met with the employers, do you recall making a statement——

Mr. Raphael: I will object to any question which is leading and suggestive. I will ask you, Mr. Examiner, on redirect, to please admonish counsel.

Trial Examiner: It sounds like a leading question.

Mr. Weissman: I withdraw the question.

May I have your Exhibit 3 for identification, please?

(Mr. Raphael hands document to Mr. Weissman.)

By Mr. Weissman:

Q. On cross examination you testified with respect to this letter, which is dated April 8th but marked "dictated April 5, 1957," and it has been marked Respondent's Exhibit 3 for identification.

Again I ask you, did you send this letter to Mr. Gamser [133] on April 5th?

A. Yes. It was dictated on the 5th. I think you will find that the 5th was a Friday, and that is why the young

lady didn't get a chance to send it out until Monday morning. It was dictated late Friday.

Mr. Weissman: I offer this in evidence as General Counsel's Exhibit 29.

Trial Examiner: It has been identified as Respondent's Exhibit 3.

Mr. Weissman: For identification.

Mr. Raphael: I will object to it as incompetent and self-serving.

[fol. 331] Mr. Weissman: Mr. Examiner——

Mr. Raphael: I marked it for identification for a limited purpose, mainly to refresh this witness's recollection.

Mr. Weissman: You will find that this letter concerns the intention of Local 66 with respect to the type of bargaining that it was carrying on, and I think in that respect it is perfectly relevant to the issues at hand.

Trial Examiner: Of course, there is much in this exhibit which is in the nature of a self-serving declaration, but I think it should be received.

Will you mark this General Counsel's Exhibit 29 in evidence?

[134] (The document above referred to was marked as General Counsel's Exhibit No. 29 and was received in evidence.)

By Mr. Weissman:

Q. Mr. Raimist, with respect to the April 11th meeting, can you tell us with whom this meeting was first scheduled?

Mr. Raphael: I will object to that as already covered in the direct and cross.

Trial Examiner: Read the question, please.

(Question read.)

Trial Examiner: You may answer.

A. The meeting was originally called for by the New York State Board of Mediation for City Steel Door Corporation. On the afternoon before, or the afternoon of the day before the conference, I received first a call from one of our committeemen from Williamsburg, and then from some of the other committeemen, who said, "Hey, how come you

don't tell us to come down to the meeting tomorrow at the New York State Mediation Board?"

I said, "That's for only City Steel door."

[fol. 332] They said, "No. We were asked by our respective employers if we were going to be at the conference"——

Mr. Raphael: I move to strike all of this out.

Mr. Weissman: I have no objection to that.

Trial Examiner: It will be stricken.

By Mr. Weissman:

[135] Q. Will you tell us whether you had any further telephone conversations with Mr. Gamser concerning this meeting?

A. Yes——

Mr. Raphael: I will object to any testimony between him and Mr. Gamser about some telephone conversation. He can ask him, "Following such a conversation, was there a meeting?"

Mr. Weissman: There has been testimony with reference to conversations with Mr. Gamser. I don't see why he now objects to it.

Mr. Raphael: In the first place, I don't have to excuse my conduct as a trial lawyer. In the second place, in those instances where I felt that the statements of Mr. Gamser were innocuous, I didn't object to them.

But at this junction of the trial, where we have been through direct and cross, it is obvious that this witness has been refreshed, and he is here for the purpose of filling in gaps, I will not permit him to give his hearsay testimony of a conversation with Mr. Gamser.

Trial Examiner: Objection is overruled.

A. I called Mr. Gamser. I told him what I had heard about the other companies. He said yes, he had heard from the employer group that City Steel was not going to come down alone, that they were all going to come down, and in the [136] interests of peace and harmony, since he was trying to get the parties together, isn't it wise to meet even if all of them are present——

[fol. 333] Mr. Raphael: I will move to strike out the answer.

A. —and I agreed.

Trial Examiner: Motion denied.
Mr. Weissman: No further questions.

Re-cross-examination.

By Mr. Raphael:

Q. Have you been in consultation or have you spoken to Mr. Weissman or anybody else in this Board respecting the testimony which you gave at this hearing, either or direct or cross examination? Did you talk to anybody about your testimony?

Mr. Weissman: Will you ask him when?

By Mr. Raphael:

Q. In the last day or two.

A. I don't understand. You mean before the trial started or since the trial?

Q. The last day or two is when the trial started, Mr. Raimist. We have been here for the purposes of a hearing.

A. I did ask Mr. Weissman whether I conducted myself properly on the stand.

Q. I asked you whether you discussed your testimony, not your conduct.

A. I didn't discuss my testimony here, today or yesterday.

Q. You didn't discuss it?

[137] A. No, sir.

Q. This testimony that you gave here, for instance, about the November 2nd meeting that you called Mr. Finkel about, had you ever given any statement about that to anybody at the Board prior to today?

A. Oh, yes.

Q. When?

A. Over a year ago.

Q. Is that contained in a written statement that you gave to the Board?

A. Yes, sir.

Mr. Raphael: I call upon the Board to produce that written statement at this time.

[fol. 334] Mr. Weissman: I will, if you will put it in writing.

Mr. Raphael: We have a request in writing in this case. It is in the record.

Mr. Weissman: The request in writing was prior to the hearing. Just put down a few words.

(Mr. Weissman hands document to Mr. Raphael.)

Mr. Raphael: May I have a five-minute recess?

Trial Examiner: How many pages is it?

Mr. Weissman: There are considerable pages.

Trial Examiner: We will take a recess for five minutes.

(Short recess taken.)

Trial Examiner: The proceeding will be in order.

[138] By Mr. Raphael:

Q. Would you please again tell us, Mr. Raimist, what transpired on November 2nd, 1956 when you testified you called up Mr. Finkel and you asked Mr. Finkel about having some individual meetings? What was said at that time? Tell us what you said and what he said in this conversation.

A. What I said, and which is a fact and there is an error in the original statement which should have been corrected——

Mr. Raphael: I will move to strike out those characterizing statements by Mr. Raimist in self-exoneration of his answer.

Trial Examiner: That may be stricken.

Give us the conversation you had between yourself and Mr. Finkel on that day.

The Witness: The conversation I had on that day was that he told me to get in touch with Mr. Raphael about arranging a conference.

[fol. 335] In my submission to the Board, after it had already been submitted I had overlooked the fact that on two respective dates where I report the thing, on the one I said that he was going to contact Mr. Raphael, which I

believe was the one on November 2nd, and at a later point I put it in correctly where I was to contact Mr. Raphael.

I did contact Mr. Raphael to arrange a conference and I called Mr. Raphael again when nothing was heard around [139] November 8th.

By Mr. Raphael:

Q. Do I understand you to say now in this testimony given here in answer to my question, that you are correcting the statement that you heretofore gave to the Board? Is that correct?

A. Only on November 2nd, because it is even repeated correctly at a later time.

Q. You want to correct the statement you gave to the Board?

A. That is correct.

Q. Is that based on something you read or some different recollection that you had since the time that you gave the Board this statement? What is that predicated on?

A. That is predicated on several things: One, on the facts of what happened; two, that after reading the thing, I realized there was an error.

Q. Did you ever see this statement—this thing is dated June 10th, 1957, and it purports to be on the stationery of the Architectural Engineering Guild, Local 66; is that right?

A. That's right.

Mr. Raphael: I want to mark it for identification.

Trial Examiner: Respondent's 4.

(The document above referred to was marked as Respondent's Exhibit No. 4 for identification.)

[140] By Mr. Raphael:

Q. Respondent's Exhibit 4 for identification is signed by you at the physical end, is it not?

A. That is correct.

[fol. 336] Q. Was this exhibit in twelve pages prepared by you?

A. It was dictated by me, yes.

Q. To your girl at the office?

A. That's right. A mimeograph was made of it.

Q. When you dictated this letter, did you have any notes in front of you at the time?

A. Oh, naturally.

Q. I take it that some of the notes that you had were the notes that you have used here during the course of this trial; is that right?

A. Those pertaining to matters in this case, and other notes and telephone messages and what-have-you.

Q. Did you, at the time you dictated the material which contains the embodiment of Respondent's Exhibit 4 for identification, have before you any written notations, memorandum, or anything else pertaining to the items of occurrence on November 2nd, the 8th, the 14th and the 15th of 1956?

A. Start off with November 2nd. Do you have memoranda as to that?

A. Yes. I had general memoranda on all that; notes.

Q. What did you do with those notes? Do you have them or [141] did you destroy them?

A. I imagine they are somewheres in the office.

Q. You mean you don't know?

A. We don't throw things away.

Q. Did you have any notes?

A. Yes; and oftentimes even when I dictate a letter I have to correct it.

Q. Do you have those notes?

A. I think I have them in the office.

Q. We will be here tomorrow, and when you get back to the office today will you ascertain whether you have them?

A. Yes.

Q. With respect to the events of November 8th, 1956, which you refer to in Respondent's 4 for identification, did you have any written memoranda which helped you refresh your recollection concerning those events?

A. Yes, on all.

[fol. 337] Q. You don't have those here?

A. No. I only brought this.

Q. Produce them, please, if you have them, and the same applies to the facts of the dateline of November 14th and November 15th, 1956.

Is it your best recollection now that you did have written memoranda which helped you to refresh your recol-

lection concerning the items which are the embodiment under the [142] datelines of the 2nd, the 8th, the 14th and 15th of November, 1956?

A. Yes, sir.

Q. So that in order for you to properly and intelligently prepare Respondent's Exhibit 4 for identification, you had available before you at the time these memoranda which you used to assist you in the preparation of this instrument; is that correct?

A. That is correct.

Q. Did you, in between the time of June 10th, 1957 and today, have the availability of any other memoranda which you looked at in order for you to modify the statement in the respects that you say you want it modified, or is it based on just recollection?

A. When I read this before going, I was surprised at that particular thing, because I know everything in all our negotiations with the association is through you. Therefore, I could not conceive how that thing got in there, and then when I read further I even found the correct statement on the thing.

Q. You corrected this at the time you read this before you turned it over to the Board, didn't you?

A. I read it and probably overlooked—I don't mean overlooked; it didn't register. I was so intent on reading the things that I dictated there, that I overlooked the one or [143] two words, which happens quite often with all kinds of people.

Q. Do you think you might have overlooked some other things in this case when you prepared this statement?

A. I am only human. You will have to judge yourself.

Q. On November 2nd, 1956, when you spoke to Mr. Finkel, you spoke to him on the telephone about sepa- [fol. 338] rate individual negotiations; is that right?

A. That's right.

Q. You testified to that?

A. Yes.

Q. What did you say to Mr. Finkel? Give us your best recollection as near as you can the words that you used in speaking. What did you say to him?

A. You have succeeded in confusing me very nicely, with all due respect.

Q. I assure you, Mr. Raimist, with all the cavalier that I have in me, that is not my purpose. I just want to get the facts.

A. Why not read the facts?

Trial Examiner: Just answer the question.

Give us your best recollection of your conversation with Mr. Finkel.

The Witness: I spoke to Mr. Finkel: He told me he was not going to have the conference at his plant. I told him he [144] was not going to dictate the union policy and that we would meet—would be glad to meet if it was not for the association, but to discuss the classifications for Williamsburg, and if the conference were arranged at Mr. Raphael's office, not at the union office, and somebody was present.

He also told me there would be no individual bargaining. It would have to be association-wide bargaining.

By Mr. Raphael:

Q. That was on November 2nd; is that right?

A. Wait a minute. I am talking of November 14th and 15th. Forgive me.

Q. Have you been paying attention to my questions?

Mr. Weissman: Have the question read.

By Mr. Raphael:

Q. My question was about November 2nd.

A. I'm sorry.

Trial Examiner: Give us the conversation of November 2nd.

[fol. 339] The Witness: November 2nd, he stated for me to arrage a conference through you.

By Mr. Raphael:

Q. What did he say to you, and did you mention to him that you wanted individual company negotiations on November 2nd?

A. Yes, the day after November 1st.

Q. What did he say to you?

A. He said that that conference would have to be arranged.

[145] Q. What did he say about having individual company negotiations? What was his reaction to that?

A. You have my date sequence fouled up.

Q. You were called here to testify on re-direct examination by Board's counsel and you have testified and you have given direct answers without refreshing your recollection from any paper. Now I am cross examining you. What is your answer?

Mr. Weissman: Mr. Examiner, I object first of all to counsel arguing with the witness; secondly, I think it is a matter of confusion of dates and not a matter of confusion of facts. I think it is a question of the witness ascertaining the proper date.

Mr. Raphael: Mr. Examiner, I will except to the remarks of counsel on the grounds that they are uncalled for. There is no confusion of any witness. That is not my mission here. I think I am legitimately and in good faith cross examining this witness.

Trial Examiner: Proceed.

He is inquiring about the conversation of November 2nd. Give us that as completely as you can.

The Witness: Mr. Finkel would meet with us and for me to arrange the conference through Mr. Raphael.

By Mr. Raphael:

Q. What did Mr. Finkel say to you, if anything? Was [fol. 340] it discussed? What was said about individual [146] company negotiations? Did you propose that to him in that phone conversation?

A. I told him I was calling him on the basis of individual company negotiations, and his reply was that the conference would have to be arranged through Mr. Raphael.

Q. Did he in words or substance say that he was agreeable to individual company negotiations?

A. Well, when I ask a man for individual negotiation conference and the man tells me to contact his attorney to arrange it——

Trial Examiner: That was the converstaion?
The Witness: Yes.

By Mr. Raphael:

Q. You don't recall what his reply was as to individual company negotiations?

A. There was, at a later date, when he said he wasn't going to meet me.

Q. Let me read you your statements, and you have given it in Respondent's 4 for identification, and ask you whether it helps to refresh your recollection:

"Phoned Mr. A. Finkel of Williamsburg Steel Products Company re: separate individual company negotiations. He said, 'Okay.'"

Did he say "okay"?

A. If that is there, he did. I am not in the habit of not telling the truth.

[147] Mr. Raphael: I move to strike out the latter portion of the answer as irresponsive.

Trial Examiner: You may strike it.

Mr. Raphael, that had reference to April 2nd?

Mr. Raphael: November 2nd.

Trial Examiner: I mean November 2nd.

Mr. Raphael: Each item, Mr. Examiner, has a separate date caption.

Trial Examiner: I haven't seen the statement. That's the reason I asked.

Mr. Raphael: I will show it to you. He has it by dates and I read the November 2nd date.

By Mr. Raphael:

[fol. 341] Q. On November 15th you testified that you had further conversation with Mr. Finkel.

Will you please tell us what that conversation was? That was the day that Mr. Halpern came over to our office to meet with you and your committee.

A. Mr. Finkel stated that he had called off the conference. I told him that he was not setting up the policy for the union, that he was going to send over Mr. Halpern to

the office. I told him that he was not going to set up policy for us.

You see, there are so many things there which involve the other telephone calls, that at the moment I cannot differentiate. They all happened in a series on that day, [148] and to try to pinpoint a thing exactly at a particular moment, I don't have that good a memory.

Q. Might I be so bold enough as to refresh your recollection?

Sitting here on this witness chair not less than a half-hour ago, in response to questions propounded to you by counsel for the Board respecting the occurrences and the events on the dates of November 2nd, November 8th, November 14th and November 15th, 1956, you answered, as I thought, all of the questions put to you by counsel. Is that correct?

A. I will answer those questions again. You asked me about little details.

Q. You are unable to answer?

A. The little details, I would have to refresh my memory.

Q. You did testify, did you not, that on the afternoon of November 15th, 1956, you appeared in our offices and met with Mr. Halpern and your committee; is that right?

A. That is correct.

Q. Were there any representatives there from any other employers at that meeting when you were discussing these classifications that you told us about?

A. No. You came in——

Q. Your answer is "no."

[fol. 342] Had you called the representatives of any other employers to attend that meeting that you had on November 15th?

[149] A. No, sir.

Q. How long did that meeting take place that you had with Mr. Halpern and the committee?

A. Well, it started somewheres around four o'clock.

Trial Examiner: How long did it last?

The Witness: About two hours or better.

By Mr. Raphael:

Q. Is it a fair statement, Mr. Raimist, that after the meeting had progressed some time that a serious argument developed between you and Mr. Halpern which resulted in the meeting being called off?

A. Yes.

Q. Tell us about that. What did you say to Mr. Halpern and what did he say to you that precipitated that situation?

A. Mr. Halpern—we were discussing classifications, and Mr. Halpern proposed certain things and I told him that it was not the proper thing to do, that is, to write classifications around the existing wage rates of employees and therefore freeze the employees in their current rates of pay.

And he tried to advance things and tell us that he was looking after the welfare of the employees, and so forth, and after much discussion back and forth and describing and evaluating an automatic progression type of classification versus the job-description type of classification, he made a comment that he was chief engineer in Europe and that's the way they wrote the classifications there. [150] I told him that this is America and he better do it the American way, and that's when the fireworks began.

Q. When you said to him, "Why don't you do this in the American way," he blew up and so did the committee, and the meeting broke up; is that correct?

A. That's right.

Q. After this meeting of November 15th, 1956, which you just told us about, did you thereafter call or write Mr. [fol. 343] Finkel or anybody in the Williamsburg Steel Products Company about continuing or resuming individual negotiations?

Mr. Weissman: Would you specify the time?

Mr. Raphael: May I have my question read?

(Question read.)

Mr. Raphael: Is that question clear?

Mr. Weissman: Yes.

Trial Examiner: Answer the question.

A. I know there were contacts of a various nature. I don't recall whether I did write. My memory is not clear.

Q. Let me in fact try to refresh your recollection and

have you look at Respondent's Exhibit 4 for identification, and tell us whether that does not in fact refresh your recollection sufficiently enough to be able to tell us that you did not have any communication with anybody in Williamsburg Steel respecting the resumption or continuance of individual negotiations.

[151] Mr. Weissman: Mr. Raphael, your original question used the word "write," and the second question uses the word "communication"?

Mr. Raphael: That is correct.

Mr. Weissman: Which question are you asking?

Mr. Raphael: Take either choice.

Trial Examiner: Mr. Raimist, does that refresh your recollection?

The Witness: No, it doesn't because this report is the highlights reported to the National Labor Relations Board at the time. It would take reams of pages of every little remark that was made, or every little telephone call ever reported. Nobody does that. These are the highlights.

By Mr. Raphael:

Q. Is it not a fact that the dateline of the items reported [fol. 344] upon after November 15th, 1956 in Respondent's Exhibit 4 for identification, the next date is November 28th, 1956?

A. That is correct.

Q. And nothing in between that time?

A. No items were reported on in between.

Mr. Raphael: I think as a matter of record the record should show that I returned Respondent's Exhibit 4 for identification to Mr. Weissman.

Mr. Weissman: That is correct.

[152] Mr. Raphael: I only have one question.

By Mr. Raphael:

Q. Mr. Raimist, I show you a telegram dated or purporting to bear the date April 19th, 1957, and I ask you whether you sent or authorized the sending of this telegram.

A. Yes.

Mr. Raphael: I will mark it for identification at this time.

Trial Examiner: That will be Respondent's 5.

(The document above referred to was marked as Respondent's Exhibit No. 5 for identification.)

Mr. Raphael: I have no further questions.

Mr. Weissman: May I have a moment?

Trial Examiner: Yes.

Mr. Weissman: No further questions.

Trial Examiner: We will recess for lunch to 1:30.

(Whereupon, at 12:10 o'clock P.M., a recess was taken to 1:30 o'clock P.M. of the same day.)

[fol. 345] [153] After recess.

(Whereupon, at 1:30 o'clock P. M., the hearing was resumed, pursuant to the taking of the recess at 12:10 o'clock P. M.)

Trial Examiner: The proceeding will be in order, gentlemen.

Mr. Weissman: I would now like to call Mr. Alfred Finkel to the stand under Rule 43(b) under rules of Civil Procedure for the District Courts.

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[183] Mr. Weissman: Mr. Examiner, at this time I have no further questions except that I would like to reserve the right to recall Mr. Finkel to the stand.

Mr. Raphael: I will object to that. I say get through with Mr. Finkel: If you have questions to ask him, ask them.

Trial Examiner: We will cross that bridge if he should attempt to recall him.

Is that all at this time?

Mr. Weissman: That is correct.

Mr. Raphael: I will reserve my questions to the appropriate portion of the case, because he is in an adversary position now.

Trial Examiner: Anything further?

(No response.)

Trial Examiner: That's all for you at this time.

(Witness excused.)

Mr. Weissman: Is Mr. Herbert Jacobson here? Take the stand, please.

[fol. 346] [184] HERBERT JACOBSON, a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Weissman:

* * * * * * *

[210] Mr. Raphael: Let the witness complete his answer.

Mr. Weissman: Address your remarks to the Trial Examiner.

Mr. Raphael: Would you instruct counsel not to walk up and back in the room? It is disconcerting to the witness and everybody else; and let the witness complete his answer.

Trial Examiner: Gentlemen, I think we have gotten along pretty well up to now.

Mr. Raphael: I don't think he should get as close to the witness as he is. I stood behind the table.

Mr. Weissman: I never knew there was a position here which we had to take.

Mr. Raphael: You stand behind the table always.

Mr. Weissman: I didn't know we were playing tennis.

Trial Examiner: If the witness objects to your coming closer, he may so indicate.

Mr. Weissman: Does it bother you if I am too close to you?

[211] The Witness: Well, I don't like you waving papers in front of my nose, but it doesn't bother me.

(Record read.)

* * * * * * *

[215] Trial Examiner: I will reserve ruling.

[fol. 347] Cross-examination.

By Mr. Raphael:

Q. Mr. Jacobson, did I ever see you before today?
A. I was here yesterday.
Q. I mean before this hearing?
A. No.
Q. Did I ever talk to you about this case or any other case?
A. No.
Q. When you went up here to the Board and made this paper up in September of 1957, did you get a copy?
A. That wasn't done at the Board, Mr. Raphael; it was done in our office at the company, and I never did get a copy until today, which I scanned before I came here.
Q. Who gave you the copy today?
[216] A. Mr. Weissman.
Q. Where and when did he give it to you?
A. Right here in one of the other offices.
Q. What time was it?
A. About half-past one.
Q. Were you served with a subpoena?
A. Yes.
Q. Do you have it here?
A. Yes, I believe I do.
Q. Will you please give it to me?

(Witness hands document to Mr. Raphael.)

Mr. Raphael: I want to offer this subpoena in evidence, unless Board's counsel will concede that this man was subpoenaed by the Board and he received a subpoena fee to appear here for this proceeding for the 27th of January, 1959 at 10:00 a.m.

Mr. Weissman: The General Counsel will stipulate that Mr. Jacobson was subpoenaed, and if Mr. Jacobson wishes to obtain a witness fee, if he applies for it he will receive it.

Mr. Raphael: He was subpoenaed on behalf of the Board to testify as a witness.

Mr. Weissman: On behalf of the General Counsel.

By Mr. Raphael:

Q. After September 23rd, 1957, when this statement was made up, what happened? Was Mr. Levy with you [217] [fol. 348] in one room. Was he writing while you were talking, or what?

A. I was interviewed, I don't recall in which office, but along with Mr. Levy, and Mr. Levy took notes as we went along.

Q. Did he write down everything you said?

A. Not word-for-word.

Q. Was there a reporter there?

A. No. He was writing by hand.

Q. Were there other people that he was interviewing at that time, too?

A. Not at the same time, but on the same day.

Q. At some subsequent time following September, 1957, was anybody from the National Labor Relations Board in communication with you?

A. After that time, not that I can recall. I am almost positive.

Q. Was this subpoena that you received—which has been conceded—dated January 16th, 1959, the first intimation that you had that the case was to be on here on the 27th?

A. Well, we had heard about that it was postponed, but the exact date—yes.

Q. Did you review his case with Mr. Weissman at any time today?

A. Mr. Weissman called me into his office today and he asked [218] that he would like to see me tell the whole truth and nothing but the truth, but nothing further than that that I personally would feel was bad.

Q. You are here telling the truth and the whole truth?

A. Yes, sir.

Q. Were you a member of Local 66?

A. Yes.

Q. When did you become a member?

A. I don't recall the exact date.

Q. As near as you can recollect.

A. About the same time that everyone else did, after almost everyone else in the place had become members.

Q. Did you sign an application to become a member?

A. Yes.

Q. Who did you give that application to?

A. I think Mr. Raimist himself; I am not sure.

[fol. 349] Q. Did you pay any initiation?

A. Yes.

How much did you pay?

A. I don't recall the amount.

Q. Did you pay any monthly dues?

A. I believe so.

Q. Did you get a receipt?

A. I think so.

Q. For how long a period of time would you say that you [219] continued to be and remained a member of Local 66 from the time you initially joined it?

A. Until after the time when we put in the decertification petition.

Q. Would that be in the summer of 1957?

A. Yes.

Q. Is it a fair statement, then, that you were a member of Local 66 for better than a year?

A. Yes, I would say so.

Q. Did you attend any meeting at Local 66?

A. Yes.

Q. How often?

A. Just a couple; I think two or three, possibly.

May I answer that further?

Q. Yes.

A. Again, I felt that since I was too close to Mr. Halpern's ear, I felt that the men would feel that I was his spy, and I didn't want any part of that. That is one of the reasons I very rarely went to the meetings. Secondly, from the other point of view, I didn't want to become too involved in the whole situation if I could avoid it.

Q. But during this period of time when you were a member of the union and you paid your initiation and you attended some of the meetings of Local 66, did anybody in Local 66 ever say anything to you about the fact that you were a [220] supervisor or an executive?

A. That happens to be a point I wanted to bring up when Mr. Weissman questioned me.

The day that I signed a card to join, I spoke to Mr. Raimist at the meeting hall of Local 66.

Q. Tell us what was said.

[fol. 350] Mr. Weissman: At this point I wish to object, because I don't think it is relevant, at to the question of whether this man is a supervisor or not, as to what Mr. Raimist said.

Trial Examiner: What is the purpose?

Mr. Raphael: The purpose is to show that he was good enough for the union up to July 1957, and they considered him a member, not a supervisor, and took his dues and everything else, and all of a sudden it behooves them to consider him otherwise. I think that is relevant.

Trial Examiner: Objection sustained.

Mr. Raphael: May I know the reason?

Trial Examiner: I think it is irrelevant to this inquiry.

Mr. Raphael: To determine whether or not this man is a supervisor or not?

Trial Examiner: No. But the mere fact that he belonged to the union wouldn't help me decide whether he was a supervisor or not.

By Mr. Raphael:

Q. Did you have some conversation with [221] Mr. Raimist about your being a supervisor or not?

Mr. Weissman: Objected to for the same reason.

Trial Examiner: Sustained.

By Mr. Raphael:

Q. Was there any conversation between you and Mr. Raimist in which, at any time while you were a member of the union, the question—there was any discussion by Mr. Raimist about your being a supervisor?

Mr. Weissman: Objected to.

Trial Examiner: Sustained.

Mr. Raphael: Let the record show that the purpose of this line of inquiry is to refute the bare inferences that [fol. 351] were raised here by General Counsel that there might be a question that this man is a supervisor and was a supervisor about July, 1957.

By Mr. Raphael:

Q. When you were questioned by Mr. Levy on behalf of the Board and you signed a statement, did he ask you specifically whether you were a supervisor or an executive?

A. No, I don't believe so.

Q. Did he ask you whether you had the right to hire and fire people?

A. He skirted around the question: "Do you interview," back and forth, more or less the same way Mr. Weissman did. I am not one hundred percent sure, but I believe I was asked directly, and I said, "No, I had nothing to do with monies [222] or anything like that. I could recommend whether something is good or bad, and then someone else would do it."

I am pretty sure that is what he asked me. I don't know whether that is in that statement or not.

Q. There were some questions asked here about this meeting in July, 1957. You told us some of the events that transpired at this meeting.

Do you recollect whether at this meeting in July, 1957 there was some discussion about the payment of strike assessments by the workers of the Williamsburg Steel Products Company?

Mr. Weissman: Objected to; immaterial and irrelevant to this proceeding.

Mr. Raphael: You opened the door. You brought out a whole question about a meeting. I have a right to find out what happened.

Trial Examiner: Will you read the question?

(Question read.)

Trial Examiner: You may answer.

A. I believe it may have been mentioned, because that was one of the key issues in the dissatisfaction among the men against Local 66, but specifically I can't pin it down.

[fol. 352] Q. Did anybody connected with management or supervision in Williamsburg Steel Products Company ask you directly or indirectly to attend this meeting of July, 1957 which you [223] told us about?

A. No.

Q. I believe you testified that at this meeting there was

some sort of a resolution adopted by those present at the time to resign from Local 66?

A. Yes, there was.

Q. What was the discussion, if any, that preceded that resolution, as near as you can recollect?

A. The discussion consisted of the fact that everyone was dissatisfied with the way Local 66 had negotiated for a year and nothing had happened, and also that there was a strike going on or had gone on up until then—I don't remember when the strike was over.

Q. What strike was that?

A. The Pioneer strike.

Q. What happened?

A. Where Williamsburg's men had been donating to a strike fund each week, and everyone was a little fed up with that because we felt no progress was being made in the negotiations, and we thought, as I said earlier in the testimony, that we thought we could do a better job ourselves than Mr. Raimist was doing or the union was doing.

Q. Were meetings held by the men in this unit from time to time on the company premises before July, 1957?

Mr. Weissman: Mr. Examiner, if he can be a little more [224] specific as to what kind of meetings——

Mr. Raphael: I want to prove, Mr. Examiner, that this pattern of the men discussing labor affairs was part of an overall pattern that had been going on in the plant there for about a year and-a-half, and this was nothing unusual. It was part and parcel of an ordinary routine there that I can say the company was pretty well fed up with. There was nothing we could do about it, but it was something that we had to accept.

[fol. 353] This business that this thing stands out like a sore thumb is just nothing at all.

Mr. Weissman: I appreciate your long dissertation and explanation to the witness, and I still raise my objections to the question.

Trial Examiner: Objection is overruled.

The Witness: I didn't get the question.

Mr. Raphael: Read it to the witness.

(Question read.)

A. To put it mildly, there had been constant turmoil for about a minimum of six months prior to this time.

The Trial Examiner: The question was whether there were meetings.

The Witness: This turmoil consisted of buzz-buzz-buzz back and forth, and every time there was a coffee break in the afternoon there was discussion pro and con, and what to [225] do and what not to do, and everybody was beating their brains out trying to get this solved.

This was the general situation. Whether there was a meeting to the extent of this one that we mentioned in the testimony, I don't think there was one that lasted that long, because we never got anything to do about it prior to this. This meeting lasted longer than others, but there had been constant talking back and forth.

The general practice in the company is that this coffee break in the afternoon is a discussion group, more or less, and at this time these discussions were primarily about the negotiations and what was happening.

Trial Examiner: Incidentally, that brings me back to something that I was going to ask earlier.

What did you say were the regular hours for work at that time?

The Witness: Eight to 4:30.

Trial Examiner: I may have misunderstood you, but did you say that this particular meeting in July occurred at four o'clock?

[fol. 354] The Witness: Yes, because Mr. Weissman asked me if there was overtime, and there was. We worked later than 4:30.

Trial Examiner: Is there a regular coffee break period, or was there at that time?

[226] The Witness: Yes.

Trial Examiner: What time was that?

The Witness: Around four o'clock; ten to or four o'clock, I don't remember.

Trial Examiner: In other words, you had been working overtime for some time before July?

The Witness: Yes.

Trial Examiner: So the coffee break took place at four o'clock and the men worked until seven o'clock?

The Witness: No; to 5:30 or six o'clock.

By Mr. Raphael:

Q. But the normal coffee break is about what?

A. Around fifteen minutes.

Q. This meeting took how long? Twenty minutes?

A. No. I think it stretched out to an hour, or close to an hour because once everybody got to talking there was no stopping them.

Q. Was a fellow by the name of Appel at the meeting?

A. No.

Q. He has been identified here as the chairman of the shop committee.

A. Yes. He was the chairman of the meeting.

Trial Examiner: I don't know whether he has been identified in the testimony. I think he was mentioned in an affidavit.

[227] Mr. Raphael: He came to these negotiations meetings. He has been identified.

By Mr. Raphael:

Q. Is that correct?

A. That is correct.

Q. Was he present at this meeting in July?

A. Yes.

Q. Was he the chairman of this meeting?

A. Yes.

[fol. 355] Q. Were there discussions by different people about all the subject matters that you were taking up?

A. Yes.

Q. Was there a vote taken, secret ballot?

A. Yes.

Q. What was the result of that count?

A. By a majority count is was decided by the men that they would file the decertification petition and resign from Local 66; and also we followed the procedure of the National Labor Relations Board in that any man who was challenged in the National Labor Relations Board election, we took his ballot and put it separately just like the National Labor Relations Board did, so that we wouldn't—just like I was challenged, we didn't count those votes that were challenged at the election, and the majority ruled anyway and we proceeded to sign these documents and took

the steps that the Board knows about, since they have these papers on file, I imagine.

[228] Q. Geographically, is the drafting room a separate place physically separated from the plant?

A. From the shops, yes. It is on an upper floor of the building.

Q. Because you mentioned something about everything being on one floor.

A. What I mean is that the bookkeeping offices and sales offices are on one floor, but it is a tremendously long corridor of which the detailing department is the end of that corridor at the end of the building.

Q. As a matter of fact, Mr. Jacobson, is it not true that a great part of your duties or activities on or about July, 1957 and prior thereto consisted of expediting or processing work through the plant?

A. Through the plant, no, sir.

Q. Or through your drafting office?

A. Yes.

Q. It is a form of expediting?

A. To keep the flow going. That is what is meant by coordinator; to keep the machinery from getting bogged down. At this time there was a tremendous amount of bogging down.

Mr. Raphael: No further questions.

[fol. 356] Re-direct examination.

By Mr. Weissman:

Q. Mr. Jacobson, when Mr. Levy took your affidavit, you stated that he didn't take it word for [229] word. You did read the affidavit?

A. Yes.

Q. Did you tell Mr. Levy at the time what was missing.

A. I don't remember what was said. I think it was put, "This is substantially what was said," or something like that.

Q. Was it rather a lengthy document?

A. You just had it here.

Q. It was a document of six pages?

A. That's right.

Q. And you signed each page?

A. Yes.

Q. You also made a statement that you were afraid that the men might think you were a spy because you had Mr. Halpern's ear. Would you tell us a little more about that?

A. Since I was in an office with Mr. Halpern, I felt that sometimes I heard things that Mr. Halpern said that were not meant for the ears of the men; and vice versa, I heard things that the men said and I didn't want to be accused of being a go-between that told stories this way and the other way. That is not my nature.

Q. Did the employees view you in that light?

A. You never know how other people view you.

[230] Q. Did they ever tell you that?

A. No.

Q. This was you own personal feeling?

A. That's right, my own personal feeling.

Q. You mentioned that there was a coffee break of approximately ten or fifteen minutes?

A. Right.

Q. And prior to the July, 1957 meeting you said for a period of time there was a good deal of turmoil about that time.

Did this turmoil end at the end of the coffee break, or a few minutes after the coffee break was supposed to have ended?

A. I wouldn't be a good judge of that because I generally didn't take the coffee break.

[fol. 357] Q. Were you different than the other men?

A. No; but I never got around to it. In other words, I couldn't stop. If a phone rang, I answered it; I didn't stop working.

Q. Your responsibility was greater than the other men?

A. I wouldn't say so; but rather than holding up material in the shop, I felt more or less it was my duty to answer—I don't drink milk, anyway; this is a milk break, not a coffee break, really.

Q. How do you know there was a turmoil at that time?

[231] A. These are glass-enclosed offices, and the door was open and you could hear it; and sometimes I would walk in, also.

Q. Were you the only employee who didn't take the coffee break at this time?

A. Not all the time; sometimes I did, if I felt like it.

Q. Were you the only employee that sometimes didn't take the break?

A. No, I imagine there were a couple of more. First of all, I never drink milk.

Q. You also testified that during the secret ballot your ballot was put aside?

A. Yes.

Q. Tell us how that came about.

Mr. Raphael: I will object to that as not proper re-direct. I didn't touch on that in my cross, and it is highly immaterial as well.

Trial Examiner: That's how it came out, in your cross examination.

Mr. Raphael: He brought out that the ballot was challenged.

Mr. Weissman: In June of '56.

Trial Examiner: Go ahead.

A. You are referring to vote that the men took themselves?

[232] Q. That's right.

A. Was it challenged?

Q. Yes.

A. I said that before.

[fol. 358] Q. How did it come about?

A. We discussed it back and forth and we decided in order to be fair that is what we would have to do.

Q. What was the discussion?

A. We decided to take a vote on whether we wanted to reject 66. We said we would do it the same way the National Labor Relations Board did it. In other words, anybody that was challenged, we would ourselves challenge the ballot.

Q. Was there any discussion as to the merits of it?

A. I don't remember. I think everybody thought it was a good idea.

Q. Did they say why they thought it was a good idea?

A. Because this was the way it had been done before.

If it was good enough for the National Labor Relations Board, it was good enough for us.

Q. This is something that all the men agreed to at that time?

A. I don't know if all agreed to it, but I don't recall any objections.

Q. There seemed to be a unanimity about it?

A. I don't know about unanimity, but almost all, and I don't [233] recall any that were against it.

Q. Did you attend a meeting on the company premises in August of 1957?

Mr. Raphael: I will object. This is improper re-direct. This definitely was never brought out anywheres.

Mr. Weissman: Mr. Examiner, may I ask the witness several questions with respect to these meetings? I admit that this was not brought out on direct and I ask permission to bring it out at this time.

This has nothing—this is separate and apart from the prior meetings, so that I don't think there is any problem with respect to Mr. Raphael cross examining.

Trial Examiner: Go ahead.

[fol. 359] A. I don't know what meeting you are referring to.

Q. Do you recall any meeting on the company premises in August of 1957?

A. Just if there was a meeting?

Q. Yes.

A. I don't think so.

Q. Do you recall attending any meeting that occurred on company premises after hours in August of 1957?

A. About that time we had already formed the Hollow Metal Engineering Association. We did have those meetings on the premises after hours.

Q. Can you tell where they were held?

[234] A. In the same place.

Q. When you say "after hours," what time is "after hours"?

A. After the day's work is done.

Q. Which would be approximately at what time?

A. Approximately six o'clock.

Q. How many employees——

Mr. Raphael: I will object to this as immaterial and incompetent.

Trial Examiner: I don't know what it is going to lead up to.

By Mr. Weissman:

Q. Do you you recall how many people attended this particular meeting?

A. Most of them.

Q. Can you tell us what occurred at this particular meeting?

A. No. This other one I remember, but anything after that, I don't.

Q. Do you recall any vote for officers?

A. Oh, yes. This is the meeting where the first election of officers was held. Then I do recall that part. There was an election and officers were elected.

Q. Could you tell me who was elected?

A. Appel was elected president; vice president was O'Regan, I believe; secretary was myself; treasurer was Murray Klein at that time.

Q. Do you recall what else was discussed at that particular [235] meeting?

A. We talked about getting rules and so on. I don't really remember.

[fol. 360] Q. May I refresh your recollection?

Was there any discussion of by-laws and constitution?

A. Very possibly, but I don't know whether it was at that meeting or the next meeting.

Q. There were several meetings?

A. Yes.

Q. Was the next meeting in September, do you recall?

A. I don't know whether it was September, but generally speaking it was a monthly meeting.

Q. Did it occur in the same place, and also after hours?

A. Yes.

Q. When you say "after hours," were there any employees working in the shop at that time?

A. No. You shouldn't say "shop."

Q. What should I say?

A. In the engineering department or drafting department.

Q. Well, in the engineering department?

A. Because there may have been people working in the shop. No one was in the engineering department.

Q. But in the shop there may have been people working?

A. Yes; in the plant, which is across the street. It is the same building, but it is the lower level across the street.

[236] Is Mr. Appel still the president?

A. No.

Q. Who is the president?

A. Mr. McCarthy.

Q. Who are the other officers?

A. Mr. Streslecki is vice president; Mr. Chicetti is treasurer. I am not sure of the others. You may ask another witness.

Q. With respect to the July, 1957 meeting, after it was over did you have any conversation with Mr. Halpern about it?

A. Did I have any conversation at that time?

Q. No; afterwards, after it was over, after the July, 1957 meeting.

A. You mean the same day?

Q. The same day, the next week, and the week after.

A. I am sure I mentioned it.

Q. So he was aware that it had occurred?

[fol. 361] Mr. Raphael: I object to that. It is not part of the redirect and I cannot see the materiality.

Trial Examiner: Objection overruled.

A. I am sure eventually this got to him, that this meeting had taken place.

Q. You said you talked to him about it.

A. After he heard about it—I don't know the sequence of events.

[237] Q. Would you say it was some time within a week after the meeting, or can you place a time?

Mr. Raphael: I will object to the question.

Mr. Weissman continues to do the same thing throughout the case. He doesn't like the witness's answer. He keeps on suggesting. The witness has made his answer. I think we have an answer. He said that Mr. Halpern must have

heard it somewhere else and maybe in the sequence of events he spoke to him about it.

A. I don't recall exactly.
Can you pin it in terms of two weeks or two days?

Mr. Raphael: Objection.
Trial Examiner: Overruled.

A. Shortly, within a period.

Q. Before the next meeting, would you know?
A. I imagine so.

Mr. Weissman: I have no further questions.

Recross-examination.

By Mr. Raphael:

Q. You are in the same room with Mr. Halpern and everybody knew about these meetings?
A. That's right.

Q. Not only from you, but from the forty-nine or fifty other people?
A. That's right.

Q. Did Mr. Halpern instruct you to go to the meeting and [238] give him a report?
A. No.

[fol. 362] Q. Did you feel duty-bound to give him a report of the meting?
A. Definitely not.

Q. You said a meeting was held in July of 1957 after hours. Could you tell us about what time of the night it was that you had that meeting?

Mr. Weissman: Mr. Examiner, just to set the record straight, I think the witness testified that it was in August.
Mr. Raphael: I said "August, 1957."
Mr. Weissman: You said "July."
Mr. Raphael: I meant August.

A. In August it was after hours, after the end of the working day.

Q. There was nobody in the office after six o'clock?
A. No.

Q. Was anybody from management around at the time that you had this meeting?

A. No.

Mr. Raphael: No further questions.

Trial Examiner: Thank you.

(Witness excused.)

Trial Examiner: We will take a recess until 9:30 [238-A] tomorrow morning.

(Whereupon, at 4:45 o'clock p. m., Thursday, January 29, 1959, an adjournment was taken to Friday, January 30, 1959, at 9:30 o'clock a.m., at the same place.)

[fol. 363] [239] Stenographic Transcript of Testimony at Hearing of January 30, 1959

[240] COLLOQUY

Trial Examiner London: The proceeding will be in order.

Mr. Weissman: Mr. Examiner, at this time I call upon the respondent to produce, under subpoena *duces tecum* that was issued to the company some time ago, such books, records or other documents of Williamsburg Steel Products Company as will show the number, names, department, job classifications, and weekly record of earnings of all employees employed by the Williamsburg Steel Products Company, excluding partners, production employees, salesmen, mechanics, teamsters and guards for the period July 5, 1956 to January 23, 1959, inclusive.

Mr. Raphael: Mr. Examiner, I would like to know the object of this, because we have produced here what we think is a record of all the employees in the technical unit. For us to drag our payroll records here, we would need a truck to do it.

If they want to come over there and get it, it is all right with us. This is just a fishing expedition. I would like to know the purpose before we bring it here, because that is a big man-sized job.

Mr. Weissman: I think that the General Counsel is entitled to these records. The records that have been produced are not anywhere near what was asked for, and in [241] view of certain testimony which has come out at this

hearing I believe it is the general Counsel's right to see these records and examine these records.

[fol. 364] If it is question of convenience for the company, I will be glad to do anything which would make it convenient for them.

Mr. Raphael: I would suggest that you go over to the company's place of business between now and the adjourned date, Mr. Weissman, and you look at those records to your heart's content. We will keep open Sundays, too, if you want to, and you can read them.

We can't start lugging them. Unless you can tell us the reason, I don't think that is the purpose of the subpoena. We have produced here, and the witness has so testified under oath, that he has made a compilation of all the pertinent records pertaining to all the issues that you are interested in and that you have told us about.

Mr. Weissman: Mr. Examiner, the records that have been produced are not payroll records. They are compilations. They are not weekly earnings. They don't show the classifications. They don't show the department. They don't have weekly earnings. This is not anywhere near what was asked for or of any real purpose with respect to my examination of witnesses in this trial.

Mr. Raphael: Mr. Examiner, our records do not show any job classifications. They merely give all of these earnings [242] of these different people per week, and that is all you have there. It doesn't show anything else.

Just simply to harass the company to make us produce books and records here that serve no purpose, I can't see it, unless this man questions the veracity of Mr. Finkel. That is something else.

Mr. Weissman: Mr. Examiner, the records that were produced are simply three monthly compilations. Some of the [fol. 365] names are crossed out; some have names crossed out and part of the compilation is crossed out; some have increases written in, other places do not. These records are not even intelligible with respect to proper examination of witnesses.

Trial Examiner: What do you think of the suggestion made that either you or someone in your behalf go there to examine the books?

Mr. Weissman: That would be perfectly all right, except I would have to have sufficient time to do it.

Mr. Raphael: When do you want to do it? You have a couple of days.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Proceed.

Mr. Weissman: Mr. Examiner, may we have a ruling with respect to the offer that was made yesterday?

[243] Trial Examiner: You mean the affidavit of Mr. Jacobson?

Mr. Weissman: That is correct.

Trial Examiner: General Counsel's Exhibit 34?

Mr. Weissman: Yes.

Trial Examiner: I have examined it and I think the objection should be overruled and the exhibit received in evidence.

(The document previously marked for identification as General Counsel's Exhibit No. 34 was received in evidence.)

Mr. Weissman: I would like to call Timothy Sneed to the stand.

[fol. 366] Timothy J. Sneed, Jr., a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

* * * * * * *

[250] Q. Do you recall having a conversation with Mr. Halpern with respect to the pension plan?

A. Yes.

[251] Mr. Raphael: Can we fix a time and place?

Mr. Weissman: Let me try and do that.

Mr. Raphael: I would like to know when.

Trial Examiner: I assume that will be the next question.

By Mr. Weissman:

Q. Can you tell us the approximate date this occurred?

A. No.

Q. Did it occur before or after the meeting of July, 1957?

A. This I don't recall.

Q. Do you recall whether it occurred in 1957?

A. Yes. It wasn't last year; it must have been in 1957.

Q. Do you recall whether it occurred during the summer time?

A. That I don't remember. I don't remember exactly what time of the year. I just remember that it happened.

Q. Could you tell us where it occurred?

A. I went in to see Mr. Halpern.

Q. In his office?

A. In his office, or in the hall; I don't know where. I stopped him and talked to him about it.

Q. Can you tell us the discussion between yourself and Mr. Halpern?

Mr. Raphael: I am going to object to it as incompetent and immaterial. No proper foundation has been laid.

[252] Trial Examiner: I don't know what the conversation is. You may answer.

The Witness: What was that question?

Trial Examiner: Give us the conversation.

[fol. 367] The Witness: Bill Singer had told me that he had seen his figures in the proposed pension plan and that——

Mr. Raphael: I am going to move to strike out what Bill Singer had told him.

Trial Examiner: The motion will be denied for the time being.

Go ahead. You are giving the conversation now?

The Witness: Yes. When I asked Bill about what figures mine were, he couldn't remember. So I went in and asked Ernie if I could see it. I was curious about it. He told me to go see Mr. Finkel, that he had it. So then I went in to Mr. Finkel's office and he showed me just my figures, and that was it, and walked out.

By Mr. Weissman:

Q. Who showed you your figures?

A. Mr. Finkel.

Q. Could you describe the papers or whatever he used in which these figures were contained?

A. They were in a booklet or hard cover, loose papers,

clipped into a booklet form. I think it was a chart or something in there that opened up into a long lengthy form.

Q. He pointed out certain figures——

[253] Mr. Raphael: I am going to object to counsel telling the witness. Let him ask the witness what he saw and did or said.

Trial Examiner: Yes.

By Mr. Weissman:

Q. Mr. Sneed, tell us exactly what Mr. Finkel did and said at that time.

A. He just opened up the book and he masked off all the figures except mine and just showed it to me.

Q. Was there tany conversation between yourself and Mr. Finkel at that time?

A. Only a comment that it looked good, and that is all.

[fol. 368] Q. At the July, 1957 meeting, you testified Mr. Jacobson was reading certain provisions of a contract to the employees that were present at that time.

Mr. Raphael: I am going to object to the form of the question. The witness did not testify that any parts of a contract were read. He said that proposals were read. I think Jacobson testified that there was no contract, that it was proposals they were talking about.

Mr. Weissman: I will modify the question.

Mr. Raphael: These things are calculated, Mr. Weissman. You know better.

Mr. Weissman: Just for the record, I deny that they are calculated.

Mr. Raphael: The record will speak for itself. Your [254] questions are permeated with loaded areas.

By Mr. Weissman:

Q. Mr. Sneed, when Mr. Jacobson was reading the provisions of the document, did he read off certain pension figures?

A. He read off a group of numbers which were supposedly figures of the pension plan.

Q. Did you recognise any of them?

A. There was one that sounded like mine. It sounded like the one I had seen before.

Q. So that the conversation with Mr. Halpern and Mr. Finkel occurred prior to the meeting of July, 1957?

Mr. Raphael: I am going to object to the form of the question, "So that." I mean, all these things are very suggestive, Mr. London.

Trial Examiner: Could you now tell us, if you can recall when that conversation took place more definitely than you testified before?

[fol. 369] The Witness: I presume it must have occurred before now. If it was a comparison, it must have happened prior to then.

By Mr. Weissman:

Q. When you were at the July, 1957 meeting, you did recognize some similarity, apparently, with respect to certain figures; is that correct?

A. Yes.

Mr. Raphael: We have two meetings here. There is a [255] July, 1957 meeting and there is a meeting after July, 1957. I don't think the witness understands—I don't understand—where these figures were read off. Was it at the July, 1957 meeting or was it as some subequent meeting? That is the thing.

Mr. Weissman: The record will speak for itself.

Mr. Raphael: I would like clarification.

Trial Examiner: You mean clarification from the witness?

Mr. Raphael: Yes.

Trial Examiner: You will have an opportunity to do that when you examine him.

Mr. Weissman: I have no further questions of this witness.

Cross-examination.

By Mr. Raphael:

Q. Mr. Sneed, did anybody in an executive capacity in the Williamsburg Steel Company ever tell you, directly or indirectly, to go to a meeting that you have testified about in July of 1957?

A. No.

Q. Did you speak with anybody in an executive or supervisory capacity before the July, 1957 meeting, whether you should or should not attend that meeting?

A. I didn't know about the meeting until that day. In fact, it was about ten minutes before it happened.

[fol. 370] [256] Q. Was it an impromptu meeting?

A. It appeared that way.

Q. When you say about ten minutes before, that would be about ten minutes before the coffee break; is that right?

A. Yes.

Q. Did you have any idea at the time that you were told to come to this meeting how long this meeting was going to take?

A. No.

Q. You didn't punch out your card at four o'clock, realizing as to the length of this meeting, did you?

A. No.

Q. By the way, were you a member of Local 66?

A. Yes.

Q. How long had you been a member?

A. From the beginning, when we all started going.

Q. Would you say it was about a year before?

A. It was about twelve or thirteen months before.

Q. Had you attended meetings at Local 66's headquarters?

A. Yes.

Mr. Weissman: Mr. Examiner, I am going to object to these questions as being immaterial to the issue again.

Trial Examiner: The answer is in.

Go ahead.

Mr. Raphael: Nobody can throw a fragmentation bomb [257] and sit by and say that nothing has happened. The witness testified to the meeting of July 1957, and I think I should inquire about it to see what came about, otherwise we will have a barren record.

By Mr. Raphael:

Q. Will you tell us the circumstances that led up to the July, 1957 meeting that you attended?

A. Prior to that and after we affiliated with Local 66,

there was a lot of bickering back and forth between the union and different companies as far as reaching an agreement. The fellows were getting tired of the dragged-out [fol. 371] session. It was going further and further and getting no place.

On top of that, they were paying into Local 66 and they were paying into a strike fund. Money was beginning to add up with nothing to show for it, and the fellows were all getting fed up with it. That's it.

Q. You mentioned Sid Appel's name. Was he the chairman of the worker's committee that was affiliated with Local 66? What was his position? Let me put it that way.

A. He was, I guess, a representative of ours at Local 66.

Q. Was he the man who reported to you from time to time as to what was going on between Local 66 and Williamsburg Steel?

A. Yes. There was a lot of secrecy going on which only Sid Appel knew about and which he never related back to the [258] men. He kept it to himself and kept quiet about a lot of things. "We will let you know later. We can't let you know right now." That added to the dissatisfaction of the men.

Q. At this meeting in July of 1957, did Mr. Appel address the body at any time?

A. He spoke to the fellows after Herb Jacobson had read the proposals. I mean, he was outlining the possibility of maybe our dealing with the boss ourselves on a better basis than maybe the union might deal with the boss.

Q. This was Appel talking?

A. Yes. Prior to that, about I think a couple of weeks before that, maybe the week before that, they had just settled the Pioneer strike and the fellows were kind of dissatisfied with the results and they felt that after spending money and everything that they wouldn't gain anything out of it all.

Q. Was his matter discussed at this meeting of July, 1957?

A. This matter was always discussed, at all times—at lunch time, at four o'clock.

Q. I am specifically directing your attention to this meeting which was placed in focus by the Board.

[fol. 372] A. Yes. It was rehashed again. I believe it was rehashed prior to the reading of the proposals that they had.

Q. Were you one of the people who tendered a resignation from Local 66?

[259] A. Yes.

Q. Were you influenced in your judgment in doing what you did, either at the meeting of July, 1957 or following that meeting, by anything that anybody said other than your own judgment?

Mr. Weissman: I am going to object to that, Mr. Examiner. The record will show that there was no unanimity with respect to resigning from Local 66. The factual basis for the question is not correct.

Mr. Raphael: I asked him whether he came to his own judgment.

Trial Examiner: You may answer.

The Witness: What was that question?

(Question read.)

The Witness: No, I don't think so.

By Mr. Raphael:

Q. Were you interviewed by a representative of this board at any time prior to this time?

A. Prior to July of 1957?

Q. No; prior to this hearing?

A. Yes. By Mr. Levy.

Q. Where did that take place?

A. In one of the offices on the fourth floor.

Q. That was on company time and property?

A. Yes.

Q. Were you paid for the time while you were being [260] interviewed by the Board's representative?

A. Yes.

Q. Did you sign any paper for Mr. Levy?

A. Yes.

Q. Was there any reporter there while your statement was being given to Mr. Levy? Just Mr. Levy and myself.

Q. Did you ever get a copy of what you signed?

A. I got a copy of it a week ago yesterday from Mr. Weissman, when he was at my home.

Q. Mr. Weissman was at your home?

A. Yes.

[fol. 373] Q. When was he at your home?

A. A week ago yesterday. He made an appointment with my wife around 5:30. When I got home, my wife told me he was coming around eight o'clock.

Q. How long did you spend with Mr. Weissman?

A. About twenty minutes to a half-hour.

Q. Did he go over your statement with you?

A. He asked me questions that he evidently had gotten from my statement.

Q. Did he at that time give you a copy of your statement?

A. Yes. He handed it to me.

Q. Did he hand it to you after you had had the interview or before?

[261] A. Before.

Mr. Raphael: May I at this time, through the Trial Examiner, ask the Board to make available the statement that Mr. Sneed gave to Mr. Levy under the circumstances and at the time testified to?

By Mr. Raphael:

Q. Was there just this one statement or were there any others?

A. Just this statement.

Q. Just the one?

A. Yes.

Mr. Weissman: May the record show that General Counsel is giving the statement to the respondent and receiving a receipt.

Mr. Newark: It is all in the record. Do you need these receipts?

Mr. Raphael: Off the record.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

By Mr. Raphael:

Q. You say you have been employed with Williamsburg since 1954?

A. Yes.

Q And always in the same capacity, as draftsman?

A. Yes.

[fol. 374] Q. Over the years prior to 1957, did you ever hear or were [262] you aware of the fact that the company was attempting—when I say "the company," I mean Williamsburg Steel—to set up for the whole office, all clerical and white collar employees, a pension plan? Did that ever come to your attention?

A. I have heard it in rumors that it was being done.

Q. When did you first hear rumors about that? How long before this decertification? Was it a year or two years before that?

Mr. Weissman: Mr. Examiner, I am going to object. I don't think rumors is competent testimony.

By Mr. Raphael:

Q. When did it first come to your attention?

A. About a pension?

Q. Yes.

Mr. Weissman: I renew my objection.

Trial Examiner: Overruled.

A. I discussed it with some of the salesmen and different people in different parts of the office. They seemed to be aware of one being compiled.

Q. When was that?

A. I don't remember.

Q. With relation to the time you came to work, how long after that was it?

A. Two years, three years afterwards.

[263] Q. Between two and three years afterwards?

A. Yes.

Q. So in effect this talk about a pension didn't come as a surprise to you, did it? You had heard about it before; is that correct?

A. Yes.

Q. Did the group of employees that formed this association retain any counsel, to your knowledge?

A. Yes. I think so. In filing the request for recognition, I think they did.

[fol. 375] Mr. Weissman: I don't know what association he is talking about, Mr. Examiner.

Mr. Raphael: They mentioned an association of employees here, called the Hollow Metal Engineering Association. I believe it was testified to by Mr. Jacobson yesterday, if my memory serves me correctly. I wrote it down.

Trial Examiner: Proceed.

By Mr. Raphael:

Q. There was such an association?

A. Yes.

Q. When was that association given a name? What meeting was that?

A. I don't recall exactly which meeting it was that it happened.

Q. With relation to this July, 1957 meeting that you have testified about, when would you say you had attended any [264] meeting at Local 66 prior to that day?

A. Prior to July?

Q. Yes. Was it six months? Was it three months?

A. It was closer to that period. I wouldn't know about.

Q. About. Would you say it was a month and a half or two months before?

A. Between a month and a month and-a-half before.

Q. Was Mr. Raimist present at this meeting that you attended, the meeting previous to the July, 1957 meeting?

A. I believe so.

Q. This bickering or resentment that you testified about that made itself apparent at the July, 1957 meeting, was that made apparent at this meeting prior thereto that you attended with Mr. Raimist?

Mr. Weisman: I object to that. I don't think it is material, Mr. Examiner.

Mr. Raphael: It shows the reason for the precipitation of the July, 1957 meeting.

Mr. Weisman: Whether bickering went on at the meeting is of no consequence.

[fol. 376] Mr. Raphael: We must be realistic. It is obvious, as it must be to all, that the apparent attempt of Board's counsel is to try to show, if they can, motivation by management. If all the indicia of a rupture were there long prior to July of 1957 because of facts and circumstances with which [265] management had absolutely no connection, the precipitousness and the suddeness of this meeting on July, 1957 seems to be well related.

I think it is perfectly proper for us to present evidence bearing upon this question.

Mr. Weissman: The witness has already testified there was bickering in the plant prior to that date, I don't see the point in going any further.

Trial Examiner: The objection is overruled. He may answer.

By Mr. Raphael:

Q. In other words, I am taking you back to the last meeting you had with Local 66. What transpired there? Were the feelings of the men manifested at that meeting as they were in the July, 1957 meeting?

A. That was leading up to it, because the fellows were continually asking what is going on and what is happening, and they were constantly being told, "Don't worry. Everything is working fine, but we can't let you know. You might upset the whole applecart," and things to that effect. It was the secrecy that was getting everybody. The tension was building up from it.

Mr. Raphael: No further questions.

Re-direct examination.

By Mr. Weissman:

Q. Mr. Sneed, at the July, 1957 meeting, when the vote was taken, do you recall the results?

[266] A. Only that it was a majority in favor of decertifying.

Q. It was not unanimous?

A. You mean everybody?

[fol. 377] Q. That is correct.

A. I don't think so. I don't recall exactly how many or whether there was any.

Q. Do you recall whether there was a large difference or a small difference between the yes's and the no's?

A. I don't recall.

Q. Was there a prior agreement among the employees present that if a majority voted yes, that they would all sign the papers?

A. There probably was, because we always had an agreement, unwritten among ourselves, that whatever we did we did together.

Q. But your recollection is that everybody signed the papers?

Mr. Raphael: Everybody signed what papers?

Trial Examiner: What papers.

The Witness: Decertification paper and the withdrawal from Local 66.

By Mr. Weissman:

Q. Do you recall whether everyone signed that paper?

A. I think everybody signed it.

Mr. Weissman: I have no further questions.

[267] Trial Examiner: That is all, thank you.

(Witness excused.)

Mr. Raphael: If you give me my receipt, I will give you these papers back.

Mr. Weissman: All right.

I would like to call Edward Wisniewski to the stand.

[fol. 378] EDWARD WISNIEWSKI, a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

* * * * * * *

Direct examination.

By Mr. Weissman:

* * * * * * *

[278] Q. Would you tell us in what respect you supervised these employees?

Mr. Raphael: I am going to object to the form of the question. There has been no testimony by this witness that he supervised any employees. Reading from some statement that the witness questions at this time is no evidence.

Mr. Weissman: The witness said he recalled it.

[279] Mr. Raphael: He recalled making a statement, he said, because it was now shown to him, but the witness did not testify that in fact he was a supervisor.

Trial Examiner: The objection is sustained.

* * * * * * *

[281] Q. Do you tell him what he is doing incorrectly?

Mr. Raphael: Mr. Examiner, I am going to object to counsel attempting to put words into the witness's mouth. He has asked this man what his duties are. He has told him. He has asked him what he does when he finds men are not [282] doing their work right. He has answered. I think these are answers.

Trial Examiner: I think the last question was a leading question.

Mr. Weissman: I will withdraw it, then.

Trial Examiner: Are you going to be with this witness much longer?

Mr. Weissman: Yes.

[fol. 379] Trial Examiner: We will take a five-minute recess at this point.

(Recess taken.)

Trial Examiner: The proceedings will be in order.

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[298] Cross-examination.

By Mr. Raphael:

Q. When you were interviewed by Mr. Levy, what did Mr. Levy tell you before he made up this piece of paper?

A. What did he tell me?

Q. Yes.

A. I don't know exactly, but I imagine he told me his name and that he was with the National Labor Relations Board, and he just wanted to ask me a few questions.

Q. Did he take down and put into this piece of paper everything you said, as far as you know?

A. No, sir.

Q. Did he omit anything?

A. I wouldn't know of anything specifically, but as I said before, we discussed several items and then he would compile it in his mind and write down what he got out of it.

Q. That was his own compilation?

A. Yes.

Q. Not what you said?

A. Yes.

Q. What did he say to you? He sort of made the statement, "This is substantially what you said," and got you to sign it? Is that the idea?

A. Yes.

Q. You assumed that everything was fine and dandy, if that [299] is what you did; is that right?

A. Yes.

Q. Is it a fact that some of the things that you said to him as you recall them are not contained in this piece of paper, Exhibit 35?

A. I would say so.

[fol. 380] Q. Would you also say that some of the things that are contained in Exhibit 35 represent, not your words, but Mr. Levy's reappraisal of your words?

A. Yes.

Q. Once this paper was written up, Exhibit 35, and you signed this paper—you recall signing the paper?

A. Yes.

Q. After you had signed the paper, what did Mr. Levy do? See if you can search your memory and give us your best answer.

A. I would say he just said, "Thank you," and I said, "You're welcome," and he went out.

Q. Did he do any writing on this paper, Exhibit 35, once you had signed the paper at or about the time before he departed?

A. Not that I know.

Q. You don't recall?

A. No.

Q. Between the time that he handed you a completed piece [380] of paper all made up and the time when you actually put your name on, did he add any more words to the paper?

A. I don't believe so.

Q. Approximately how long a period of time would you estimate elapsed between the time when Mr. Levy began to interview you and the time when he actually departed? Was it an hour, a half-hour?

A. You mean how long was the interview going on?

Q. That's right.

Trial Examiner: Your question was broader than that, I thought.

Mr. Raphael: My question is beginning with the time Mr. Levy came in and said, "I am Mr. Levy from the National Labor Relations Board."

The Witness: He was in the office. I went in.

By Mr. Raphael:

Q. This was on company time?

A. Yes.

Q. And in the office of the company?

A. Yes.

Q. Were you docked for talking to Mr. Levy?

A. No.

[fol. 381] Q. Did you punch out?

A. During the interview?

Q. Yes.

A. No.

[301] Q. How long did this interview last? From when to when?

A. I don't know exactly when it was. It was in the afternoon some time, during working hours. It was probably about twenty minutes or half-an-hour.

Q. Between twenty minutes and half-hour?

A. Yes.

Q. In that twenty minutes or a half-hour, did Mr. Levy first ask you questions orally without writing them on a piece of paper?

A. Yes.

Q. How long did that oral interview take during which he did not write anything at all?

A. I would saw we were talking seventy-five per cent of the time.

Q. In other words, of the approximate twenty minutes, you would say about fifteen minutes of that was devoted to your discussing things with him?

A. I would say so, yes.

Q. Was it following the conclusion of that discussion which lasted about fifteen minutes that he then proceeded to write up this piece of paper, Exhibit 35?

A. No. He wrote in between our discussion.

Q. He kept talking and writing?

A. No. He talked for a few minutes and then we discussed several items and then he would write down an approximation [302] of what we had discussed.

Q. As he was writing, let's say the first sheet of Exhibit 35, did you keep on discussing this sheet with him?

A. As he was writing, no.

Q. He did his own writing and he did it by himself?

A. Yes.

Q. You had no participation in that?

A. No.

Q. Except to sit there?

A. Yes.

Q. I want to direct your attention to the first page of Exhibit 35. The first sentence reads: "I live at 5 Mozart Lane, Bethpage, New York."

That is correct, is it not?

A. Right.

[fol. 382] Q. Did you tell him that?

A. I believe so.

Q. Then it continues with: "I am employed by Williamsburg Steel Products as chief draftsman in charge of the detailing department."

Before I ask you about sentence, you testified in answer to earlier questions of the Board counsel that you were senior draftsman; is that correct?

A. Yes.

Q. Were you in or about July, 1957, employed in that capacity? [303]

A. Yes.

Q. Who was the chief draftsman in June or July of 1957 in Williamsburg Steel who was recognized as such by the company as being the chief draftsman?

A. Actually, there was no title bestowed on anyone as chief draftsman at that time.

Q. What was Mr. Halpern in the company?

A. Chief engineer, I believe. I don't know what he was on the records, but he was called the chief engineer.

Q. And you were a senior draftsman?

A. Yes.

Q. Did you tell Mr. Levy that you were a senior draftsman, or did he ask you whether you were the chief draftsman?

A. I don't recall.

Q. Do you recall whether you told Mr. Levy that you were employed as a senior draftsman?

A. I probably did.

Q. As you read the words "chief draftsman" in this sentence, was it your conclusion that that was synonymous with senior draftsman?

A. Yes.

Q. Right under this last sentence I read to you, and immediately preceding the next sentence on this page, which begins with the words "I attended the meeting held in the [304] enginering department"—in between these two lines and in the middle of the line is written in the words: "I have about fourteen draftsmen under my supervision at present."

Do you recall whether these words were written in be-

tween these two lines while you were talking to Mr. Levy?
[fol. 383] A. I don't recall whether they were even there. I don't recall.

Q. I notice that Mr. Levy asked you to sign each and every page at the bottom of the page; is that right?

A. Yes.

Q. You know what initialing pages means, don't you? Have you ever had occasion in your life to initial a page whether to make a correction or an addition?

A. Yes.

Q. Would it have occurred to you that if these words were in as they are now between these two lines, "I have about fourteen draftsmen under my supervision at present," that you might have asked to initial these words?

Mr. Weissman: I object. That is a hypothetical question. I don't think it is a proper question at this time.

Trial Examiner: Sustained.

By Mr. Raphael:

Q. Were you asked by Mr. Levy to initial anything between these two lines at the point where the words were written in?

[305] A. No.

Q. Mr. Levy was pretty careful when he wrote this up and read it to you, wasn't he?

A. He didn't read it.

Q. He didn't?

A. Wait. I believe he did read this.

Q. How long did he take reading this over to you?

A. A few minutes.

Q. Pretty quickly?

A. Yes.

Q. Did he hurry it?

A. No, he didn't hurry.

Q. Did he have other people to see?

A. I believe so.

Q. He interviewed quite a few people that day, didn't he?

A. Yes.

Q. When you were finally shown this paper by counsel to identify this signature, and when you were asked whether

this represents what you said to Mr. Levy, you said it approximately represents.

[fol. 384] What did you mean by the words "it approximately represents"?

A. I believe he asked me does this approximate what we discussed, and I answered yes. He asked me to sign it and I signed it.

[306] Q. Did you speak to anybody about this, or were you given an opportunity to go and read this and then return this to Mr. Levy, or were you asked to sign it right there and then?

A. Right then and there.

Q. Were you given a copy?

A. No.

Q. Do you work on the drafting board, Mr. Wisniewski?

A. Sometimes, yes.

Q. Do you punch a time clock?

A. Yes.

Q. Are you paid by the hour or by the week?

A. By the hour.

Q. What is your hourly rate?

A. Four dollars.

Q. You testified in response to a question propounded to you by counsel that you spend about twenty-five per cent of your time walking around observing what junior draftsmen are doing.

Do you recall giving that answer?

A. Yes.

Q. With respect to the other seventy-five per cent of your time, how is that spent?

A. It is mostly paper work. I get all the mail from the control department and I go through it and sort it out and [307] pass it out to the individuals. I receive all the new jobs as they come in and catalog them as to how hard they are or how easy they are. I do drafting on some jobs myself and I have to keep up with those.

Q. Would you say you spend about thirty or forty per cent of your time on the board?

A. I sit at the board all the time. I would say about the same amount of time is spent in drafting.

Q. Is about thirty to forty per cent a fair estimate?

A. Yes.

Q. And there your drafting work is similar to the drafting work of other draftsmen in the place?

A. Yes.

[fol. 385] Q. I assume, or take it from your experience with the company, that the drafting work that you do perhaps is of a more difficult nature, involving perhaps complex jobs; is that right?

A. Complex, but smaller; otherwise it would take too much of my time.

Q. You know what a leadman is, don't you?

Mr. Weissman: I am going to object to this, Mr. Examiner. I don't think that this is relevant, whether the witness knows what a leadman is or not.

Trial Examiner: He may answer.

Do you know what a leadman is?

[308] The Witness: Yes, I would say so.

By Mr. Raphael:

Q. In the course of your duties, do your perform any of those functions that are customarily part of a leadman's work?

A. Yes.

Trial Examiner: I think he ought to tell us first what he considers it to be.

By Mr. Raphael:

Q. Tell us first what you consider a leadman to be.

A. I consider a leadman to be in charge of a group of men, to advise them or help them in any way he sees fit.

Q. Is that the type of work among other things that you were doing?

A. Yes.

Q. You were asked about a ballot that you cast in the National Labor Relations Board election that was held to determine the bargaining agent for this group of employees and that that ballot was challenged.

Who challenged that ballot? Was it challenged by Local 66?

A. At the National Labor Relations Board election?

Q. Yes.

A. I don't recall; I don't know. I don't know if I ever did know.

Q. Were you a member of Local 66?

[309] A. No, sir.

Q. You never joined Local 66?

A. No, sir.

[fol. 386] Q. Were you asked to join?

A. I don't think anyone asked me from 66. Some of the men might have asked me if I am going to join, and I told them no, not at present.

Q. Were you subpoenaed to come here and testify?

A. Yes.

Q. Were you interviewed at your home by anybody from this Board?

A. No, sir.

Q. When for the first time since you signed this statement, Exhibit 35, did you speak to anybody, if at all, connected with the National Labor Relations Board?

A. I got a phone call from Mr. Weissman Monday, I believe. I believe it was Tuesday.

Q. That phone call was what?

A. He informed me that he had made arrangements with the company that I wouldn't have to be there at ten o'clock. I believe it was Monday. He informed me—he asked me if I had received my subpoena and he said that he made arrangements that I would not have to appear at ten o'clock on Tuesday, that he made arrangements with the company that we would be called when needed.

[310] Q. At this meeting in July of 1957 that you testified you attended, did you take any active participation in that meeting, apart from voting?

A. I probably said a few words in the discussion. Almost everyone did.

Q. Was this statement that has been marked in evidence as Exhibit 35 discussed with you prior to your testifying here today?

A. No.

Q. Were you shown a copy of this statement before you came here today?

A. Only by Mr. Levy, when I signed it.

Trial Examiner: When? Last night?
The Witness: Only by Mr. Levy, when I signed it.

By Mr. Raphael:

Q. But since the date that you signed it in September of 1957 up to the time that you testified here at this proceeding, you have not seen this statement or a copy of it at all?

A. No, sir.

[fol. 387] Q. Did you ever hire anybody yourself, Mr. Wisniewski?

A. No, sir.

Q. Did you ever discharge anybody yourself?

A. No, sir.

Q. Do you know who handles the employment and discharging of people?

[311] A. For the engineering department?

Q. Yes.

A. Mostly Mr. Rosner.

Q. I mean at or about July of 1957. Was Mr. Rosner with you then?

A. I don't believe he was there yet.

Q. Who was doing it at that time?

A. Mr. Halpern.

Q. How often did you make recommendations to Halpern?

Mr. Weissman: I object to that question, unless it is specified what type of recommendations.

Mr. Raphael: Recommendations with respect to personnel.

Mr. Weissman: I still object. I think it is vague and misleading.

Trial Examiner: The objection is overruled. He may answer.

A. Every time I gave a new employee a test I discussed it with Mr. Halpern, and generally during reviews, quarterly reviews, I would discuss each junior man.

Q. How about senior men?

A. We didn't discuss them too much. Of course, we would talk about them, but there was no recommendation on my part for senior men.

Q. None at all?

A. No.

[312] Q. Did you have any senior men in the department you were in? You were in what? The detailing department?

A. Detailing division. Actually, it is a division of the engineering department.

Q. In your detailing division, were there any senior men employed?

A. Yes.

[fol. 388] Q. About how many, would you say?

A. At that time?

Q. Yes. As near as you can recollect.

A. It is probably about the same as it is now. I would say approximately five I would consider senior.

Q. Out of a total of between twelve and fourteen?

A. At that time. Now I believe there are eighteen.

Q. Referring back again to the period immediately before July of 1957, is it your best recollection that you had approximately five senior men in the detailing division?

A. I would say so, yes.

Q. With respect to those five senior men in the detailing division, were you consulted about merit reviews for those people?

A. No. Usually when he would go through the book with the man's name and what he was making——

Q. Who is "he"?

A. Halpern.

[313] Q. What would happen?

A. He would mention a name so-and-so, how is he coming along. I would tell him that I believe he is doing as well as can be expected or he doesn't seem to be showing too much improvement.

Trial Examiner: With respect to whom was it? Junior or senior?

The Witness: Junior.

By Mr. Raphael:

Q. How about senior?

A. Senior men we didn't discuss too much.

Q. Who handled that? Halpern himself?

A. Yes, I imagine.

Q. Certainly you weren't consulted about them?

A. No.

Q. In this meeting of July, 1957, concerning which you testified you were present, and you also testified about some proposals being advanced at that meeting, do you recall whether in those proposals which were advanced at that time whether there was any reference made to [fol. 389] salaries or wages for you or any other people?

A. I don't know whether it was in the proposals or whether it was just in the discussion that the question of raises came up.

Q. Was yours involved, too, or was this for everybody?

A. It was in general.

[314] Q. Did Mr. Weissman discuss with you this morning as to what, if anything, you should do concerning your testimony here today?

A. He just expected me to tell the whole truth, and that's all.

Q. Was your statement discussed this morning?

A. He only asked me one question. I don't know whether it was on the statement or not. He asked me if Mr. Halpern had made an announcement in April of 1957, I believe about a raise for the employees.

Q. Were you asked by Mr. Weissman or anybody else at this Board to testify here as to what you said in the statement?

A. You mean before I had been put on the stand?

Q. This morning, while you were here.

A. No. He just stated he had the statement.

Q. What did he want you to do about it?

A. Nothing.

Q. Did he show you the statement?

A. No.

Q. With respect to the seniors in your detailing division, do any of those people require guidance by you?

A. I wouldn't say guidance. I would say we consult with each other.

Q. Is it a fact some of these seniors come and talk to [315] you about matters they are interested in and vice versa you do the same thing?

A. Yes.

Q. That is a general routine?
A. Yes.

Q. They are not answerable to you, these seniors, are they, in the sense that you can discipline them if they don't do their work properly?
A. I can't discipline them, no.

Mr. Raphael: No further questions.

[fol. 390] Re-direct examination.

By Mr. Weissman:

Q. Mr. Wisniewski, after you read this affidavit, but before you signed it, did you tell Mr. Levy that there were parts that you wanted put in in addition to what was there?
A. No, sir.

Q. And you did read it?
A. I believe I read it through.

Q. With respect to the reviews that you have with Mr. Halpern about junior employees, does this concern their trial period?
A. Yes.

Q. Whereas senior employees are past the trial period; is that correct?

Mr. Raphael: I am going to object to the form of the [316] question, because it is a paraphrasing or a dilution of the witness's prior testimony.
I submit that the witness can be asked why doesn't he participate in the review of senior draftsmen. That might be a more logical question.
Trial Examiner: Reframe your question.

By Mr. Weissman:

Q. Are senior draftsmen beyond their trial period?
A. Yes.

Q. When you on direct examination stated——
A. Excuse me. I would like to retract my last answer. Sometimes.

Q. Could you tell me what the "sometimes" is all about?
A. Sometimes we hire a draftsman as a senior drafts-

man and he is in a trial period for a certain length of time until we find out if he is capable of doing the work.

Q. With respect to the senior draftsmen who are there on trial, does Mr. Halpern talk to you about them?

A. I generally look over their work when they first come, for the first few jobs——

Q. Then he talks to you about it?

A. —closer than I would anybody else's work, any other senior draftman's work.

[fol. 391] Q. Then you and Mr. Halpern discuss it between the two of you?

[317] A. That's right.

Q. With respect to the type of work this individual is doing?

A. Yes.

Q. When you testified that in July of 1957 there were approximately fourteen draftsmen under your supervision, you had included the senior draftsmen and the junior draftsmen; is that right?

A. The total would be in that area. It would include everyone.

Q. With respect to your direct testimony that you gave out the work to the draftsmen, you do the same for the senior draftsmen as you do for the junior draftsmen?

A. Sometimes. I don't give the work to everybody all the time—that is, to any of the men all the time.

Q. But with respect to the work that you do give out, you give it out to either seniors or to juniors, depending upon the type of work that is involved and the complexity?

A. That's right.

Q. With respect to your responsibility for the quality and quantity of the work, this would encompass the senior and the junior draftsmen; is that correct?

A. More so the junior draftsmen. Even before they become seniors, they may reach an intermediate stage and would go on their own. There is less close supervision.

[318] Q. In other words, the more experienced the man, the less the supervision?

A. Yes.

Q. But there is supervision in any event for all, both junior and senior?

Mr. Raphael: I am going to object to the form of the question. He is constantly paraphrasing the witness's testimony. I object to the form of the question.

Trial Examiner: Sustained.

By Mr. Weissman:

Q. Except for the degree of supervision, there is supervision both of seniors and juniors?

[fol. 392] Mr. Raphael: I object to the form, and it has already been answered.

Trial Examiner: Sustained.

By Mr. Weissman:

Q. I believe you stated on cross examination that you earn four dollars per hour. Is that correct?

A. Yes.

Q. Is that more than any of the other employees earn in that department?

A. I don't know.

Q. You don't know?

A. I don't know for sure.

Q. Is it your belief?

A. I would assume.

[319] Mr. Raphael: I move to strike out what he assumes.

Mr. Weissman: I believe it should go in. His assumption of this matter is important.

Mr. Raphael: The witness testified he doesn't know. "Assume" would obviously be a guess.

Mr. Weissman: "Assume" would depend upon his own view of his importance in the department.

Mr. Raphael: I move to strike it out as speculative.

Trial Examiner: The motion is granted. It may be stricken.

By Mr. Weissman:

Q. I want to show you this affidavit once more. I want you to look at the line which you looked at previously, the line that was written in between the other two lines. I want you to examine it very carefully and tell us whether it is or is not your handwriting.

A. It is not my handwriting.
Q. You are certain?
A. Positive.

Mr. Weissman: I have no further questions.
Mr. Raphael: No questions.
Trial Examiner: You may be excused.

(Witness excused.)

[fol. 393] Mr. Weissman: May we go off the record?
Trial Examiner: Off the record.

(Discussion off the record.)

[330] Trial Examiner: On the record.

In connection with the statement made by the General Counsel and counsel for the company this morning dealing with the subpoena that was served on the company to produce certain records, in view of the company's statement that they will make those books and records available to the General Counsel, I think it would be appropriate at this time to grant the General Counsel a recess so that he may make that examination.

As I understand it, the books will be made available to him upon demand.

Under the circumstances and in view of the estimate placed by the General Counsel on the time it would take him to make that examination, I think a recess until Tuesday morning would be appropriate.

Off the record.

(Discussion off the record.)

Trial Examiner: We will take a recess now until 9:30 Tuesday morning.

(Whereupon, at 12:30 o'clock P. M., Friday, January 30, 1959, an adjournment was taken to Tuesday, February 3, 1959, at 9:30 o'clock, at the same place.)

[fol. 394] [321] Stenographic Transcript of Testimony at Hearing of February 3, 1959.

[322] PROCEEDINGS

Trial Examiner London: The proceeding will be in order.

Mr. Weissman: I am calling Ernst Halpern to the stand under Rule 43(b) of the Rules of Civil Procedure for the District Court.

Trial Examiner: All right.

ERNST HALPERN, a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

* * * * * * *

Direct examination.

By Mr. Weissman:

* * * * * * *

[349] Mr. Weisman: Mr. Examiner, I have no further questions of this witness, but I renew my offer.

Mr. Raphael: Same objection.

Trial Examiner: The objection will be sustained. General Counsel's Exhibit 36 for identification is rejected.

(The document previously marked for identification as General Counsel's Exhibit No. 36 was rejected.)

Trial Examiner: Have you concluded your direct examination?

Mr. Weissman: Yes.

Trial Examiner: We will take a five-minute recess.

(Recess taken.)

[fol. 395] Trial Examiner: On the record.

[350] Cross-examination.

By Mr. Raphael:

Q. Mr. Halpern, I have juse a few questions about Exhibit 36 for identification, which is this twelve sheets of writing.

Can I ask you whether Mr. Levy spoke to you about this at the Williamsburg Steel office?

A. Spoke to me about the sheets?

Q. Yes; about these papers.

A. He was marking it down.

Q. How long did you spend with him at the time?

A. I really don't recall the exact time.

Q. Did you read each and every word of this statement?

A. No. I couldn't read it. It is written in such a way that I couldn't read it. I don't think anybody could read it.

Q. Did he explain it to you, or what?

A. He marked it down as I was saying it, or whatever I was saying he marked something down, and then I signed it.

Q. In other words, you didn't read each and every word of this thing, did you?

A. I didn't read none of it.

Q. This purports to bear a date of September 25, 1957. Do you recall whether on that particular date Mr. Levy was interviewing any other people besides yourself?

A. I don't know the exact date, but when he was up there he [351] interviewed quite a few.

Q. He never came back on any day after that, did he, to your knowledge?

A. I don't recall.

Q. About how many people in all would you say that Mr. Levy interviewed that day?

A. I don't know how many on one day, but I think it was about two days or so that he was up there. He interviewed quite a few. One man came in and one man went out.

[fol. 396] Q. You gave him the facilities, I take it, to do this job?

A. Yes. He had an office and nobody went in there.

Q. Did Mr. Levy ever ask you about any meetings that you had with Joe Raimist in May of 1957?

A. I volunteered it. I told him all kinds of things, but I don't think he felt it had any importance to mark it down.

Q. So he didn't put it down?

A. No. There were a lot of other things I told him, because he wanted the whole background, but he didn't put down everything. He said, "That is not so important."

Q. The counsel showed you what purports to be a typewritten transcription of these twelve yellow sheets, which of course makes this more legible, and you were asked to refer to various portions of what purports to be a transcription of Exhibit 36 for identification and you gave answers predicated on what you read.

[352] In turn, I will ask you again to please examine this document and tell us whether you observe therein contained any reference to the statements or discussions that you had with Mr. Levy concerning your meetings with Mr. Raimist sometime in 1956 respecting wage and salary classifications for the employees.

A. I read this document and there is no reference whatsoever in it.

Q. You told Mr. Levy about it?

A. Yes.

Q. Did you, in fact, have a meeting or meetings with Mr. Raimist and a committee concerning the matter of the establishment of classifications for the various employees in the technical division of the Williamsburg Steel Products Company?

A. I did.

Q. Is it a fair statement that those meetings were held sometime in the latter part of 1956?

A. Right.

Q. Did you have one or more meetings with Mr. Raimist respecting that question?

A. I had a hard time getting him to one meeting. That was the only one we had.

Q. How long did that meeting take?

A. He came to the meeting place around one o'clock; [fol. 397] around [353] this time. Then I had to wait for Mr. Raimist until he showed up, a couple of hours late,

an hour or two late. I don't recall the exact time. All I know is we had to wait. I am reconstructing this thing. Since I had to go home at six o'clock in this car pool thing, I left probably right before that. I would say the whole afternoon.

Q. Do you have any present recollection as to the place of the meeting and the participants in the meeting?

A. The place of the meeting was your office, and participating were Toby Lang, Sid Appel, Mr. Raimist, and myself. I think Lang's full name is Langiulli.

Q. Toby Lang is present in this hearing room, is he not?

A. Right.

Q. This meeting you say took about a whole afternoon?

A. Yes.

Q. Generally, if you will, give us the highlights of the substance of that meeting.

A. I was sent there by Mr. Finkel to find a common technical ground for classifications, since Mr. Finkel was technically not qualified to judge what a lister or detailer or whatnot is. He sent me there to find a common technical language for classifications. I was not authorized to speak about wages, monies, make agreements, or anything of this sort.

Q. During the course of the meeting which you have referred to, did you have occasion to give to Mr. Raimist and the [354] committee that accompanied him some sheets containing a resume of the various classifications that you were discussing that afternoon?

A. I did.

Q. I show you a photostatic copy in three pages and ask you wether this is a fair representation or a facsimile or an original document which you turned over to Mr. Raimist at that time and which you just referred to in your last answer.

A. Yes.

Mr. Raphael: I am going to mark these three sheets for identification.

[fol. 398] (The documents above referred to were marked as Respondent's Exhibit No. 6 for identification.)

By Mr. Raphael:

Q. As you look at Respondent's Exhibit 6 for identification, does it help you refresh your recollection as to the events which took place more than two years ago at this particular meeting between yourself, Mr. Raimist, and the other individuals?

A. I can recollect the general meeting.

Q. Does this exhibit help you to recollect in greater detail some of the things you said to Mr. Raimist at that meeting, as to the classifications involved?

A. Yes.

Q. As you look at this exhibit, Respondent's 6, tell us [355] whether or not you at that meeting discussed the matter of classifications and what you said to Mr. Raimist was the proposal of Williamsburg Steel concerning the establishment of a set of classifications for the technical employees under your supervision.

A. I told Mr. Raimist that I was sent there to establish some technical classifications for our employees, that I have papers with me enumerating those classifications.

Q. Can you enumerate those you talked about?

A. Draftsmen being broken down into apprentice, junior, intermediate and senior.

Q. Read them off.

A. Listing: Apprentice lister, junior lister, intermediate lister and senior lister.

Elevator department: Apprentice, junior, intermediate and senior.

Apartment House: Apprentice, intermediate and senior.

I tried, as much as he let me talk, to explain what each one of those classifications means.

Q. You mean the criteria?

A. The criteria of those classifications. When a man is shifting, so to speak, based on his knowledge, from one to the other. For example, if a man is a lister and he is being checked, then he shifts into a position where he [fol. 399] becomes a checker, or in a position where he doesn't be checked any [356] more, his work is sent into fabrication directly, so he becomes a senior. I asked his opinion about these things and what he thinks about it.

Q. What did Mr. Raimist then say?

A. He got a little excited. He said, "We won't let you tell us what to do."

So I asked, "Well, what do you want to do? What do you propose?"

So he took out a form—I don't recall any more the exact wording on it. It was his set of classifications, and he explained to me that that is what he wants our company to adopt. There wasn't any mention in there to any of the engineering work we were doing. It was strictly about electric, wiring, schematics. We have nothing to do with this.

I said, "How can I classify a man in something that we don't have, some work which doesn't exist?"

Again he gave me a long speech. He is a good speaker. He winds up saying, "We are not going to do your work."

Then it went back and forth. I tried to pin down what he wants to bring back to my company and give it to Mr. Finkel so that he has a basis and I will be through with it. But he then got off. He got real going and he said, "Well, you are not going to impose your European ways in here. This is America."

[357] All I wanted was to get classifications. I wasn't interested in geography.

Finally, I couldn't do anything with him any more. He gets excited. I said, "What are we going to do now?" So the meeting broke up.

Q. In the course of the discussion which you testified to, was there any talk about the matter of promotions from one classification to another?

A. The way I recall it was that the work itself that the man does promotes him. If the man does work, let us say, that doesn't have to be checked, he is a senior, whether [fol. 400] I like it or not. It would be much more costly to my company to check a senior just so he shouldn't be a senior, because it takes just as long to check it as it does to draw it, or to list it.

Mr. Weissman: I move to strike the answer. I don't think it is responsive to the question.

Trial Examiner: I will let it stand.

By Mr. Raphael:

Q. The subject matter of Respondent's Exhibit 6, which was on the agenda of your discussion at the meeting you testified to, were these various classifications and criteria in principle followed up to the point of that meeting by your company? In other words, was this the general way in which you were rating employees?

A. That's right. This was what we were actually doing. I [358] figured I would start out with that.

Q. From time to time were people going from one classification into another?

A. That is the way they got their raises. They just moved.

Q. Those were promotions, weren't they, in effect?

A. That's right.

Q. Those things continued after your meeting with Mr. Raimist, didn't they?

A. That's right.

Q. In the summer of 1957 you were still making promotions from classification to classification; is that right?

A. Definitely.

Q. Mr. Halpern, I don't know whether you were here or not, but during the course of the proceedings what was offered in evidence by General Counsel was what is now Exhibit 30-A, B and C, three sheets, purporting to be a graphic breakdown of the various employees and the increases that they were given from time to time, going right into 1959. I guess you have seen this before, haven't you?

A. Yes. These are the review sheets.

Q. As you sit here and look at these sheets composing this Exhibit 30, by looking at these various wage and salary revisions indicated in the various columns of these [fol. 401] exhibits [359] can you ascertain or tell us with any reasonable degree of certainty whether or not any of these revisions represent promotional increases given to an employee when he goes from one classification to another?

A. Yes, they do; each one of them.

Q. Is it a fact, then, according to your testimony, that some of these salary or wage revisions which are reflected in this exhibit do in fact represent increases given in the

form of promotions, or rather for promotions from one grade to another?

A. They do.

Q. Supposing you realize it has been some time, perhaps two years or longer in some cases, insofar as some of these revisions are concerned.

As near as you can recollect, I would like you to examine this a little carefully and tell us how many, if you know, of these revisions indicated in this exhibit represent promotional increases given to an employee when he was upgraded, or downgraded, depending on what the situation was.

A. Let me just eliminate one thing. Downgrading we didn't do at all. We never cut a man's wages.

Q. Let us restrict ourselves to upgrading.

A. That's right. Any increase—generally, I can say this—in the lower brackets, which I would say roughly is up to ninety dollars, was presented definitely as a shift in [360] classification.

Do you want names?

Q. Take numbers. Give us some idea of the proportions, or percentages.

A. The first fellow here on this second one, Oscar Henry Goodwin——

Mr. Weissman: Can we have the time?

The Witness: Let me get my bearing on this sheet.

He started with fifty dollars.

Trial Examiner: When?

The Witness: I believe 1955. He is the first man on the list.

[fol. 402] I picked him. I called the boy, because the squad leader of this section, Wisniewski, always wanted to throw him out; the other fellows, too, but I felt he would make it. The first year he was what we consider an Indian, a helper. The experienced man did the drawing and he copied the details. We tried him off and on on his own and he didn't make out so good. It is right in here. He didn,t get a raise for a whole year.

Then he started going on his own. He started by himself and his work was checked and he was rewarded, and it bears me out in here, a five-dollar raise a year later, in

1956. From then on he started going. We gave him a chance. He advanced. He wound up in the school department.

[361] We had a section like this. We used to once in a while make up a section and put a man in charge and we used to call him a squad leader, or some name. When the work was over, we disbanded it. He made nice progress. He made details on his own, without checking.

If you look on the line here, you will see from fifty dollars he got all the way up to eighty-seven dollars, $90.50.

Q. Those were promotions?

A. Yes. He had to produce.

Q. He was going from one grade to the other?

A. That's right.

Q. Take some of the others.

A. I will just go down the page. There is no particular reason. They are all the same way. I will just pick another one.

There is one on top of the page, Charlie O'Regan. He is a fellow that worked in the factory and was found to be very smart and promising. He was brought up to me and his wage was reduced, because while in the shop he was a mechanic. Upstairs he was a novice.

He was put on the board at the rate of $1.57½ an hour. This was higher than we would ordinarily start out a be-
[fol. 403] ginner. It was May, 1955, by those records. He had to wait a little for an increase until he caught up with his classifications. He used to come to me and say, "Look, I [362] took a cut. I want a raise." I said that there were other boys in his group and he had to wait.

He waited until January of 1956 and he got an increase. He should have gotten an increase every six months, but he had to catch up with the other boys in his group and then he continued with them, as you can see here. It was the same thing.

Right now he is a straight lister. He was first being checked, then he became a checker, then a straight lister, and then in time when he made the move he got a raise.

Q. Without belaboring this case, it is a fact, is it not, that as you look through these sheets that other names shown and other revisions indicated represent, do they not, promotions from one classification to another?

A. Right; they do.

Q. Is it not also a fact that in addition to promotional classification increases upgrading, there were also merit increases?

A. That's right.

Q. In making these merit reviews, there are certain factors that you consider in a man's work, aren't there?

A. Yes.

Q. The quality, the quantity, the diligence, the efficiency, the neatness?

A. Yes, that's right.

[363] Q. The difficulty of the work?

A. That's right.

Q. Et cetera. Is that correct?

A. That is correct.

Q. It becomes necessary, does it not, under those circumstances to evaluate each employee who is in a sense a prima donna in those cases?

A. That's right.

Q. Many of these people are people with college degrees?

A. Some are.

Q. Some have engineering background?

A. Quite a few.

Q. I assume that from time to time each man came with his individual pack of troubles to you and wept on your best job in the place?

A. Right. Most of them so, yes.

[fol. 404] shoulder, saying that he felt he was doing the

Q. It fell to you to make these various adjustments and then take them up with Mr. Schwartzberg, and then, as you testified, Mr. Schwartzberg was ultimately the man who said yes or no?

A. As far as I am concerned, yes.

Q. Mr. Schwartzberg himself has an engineering background?

A. Right.

Q. Did you ever have any meetings with Mr. Raimist subsequent to this meeting of November, 1956?

A. No, I didn't.

[364] Q. There was some testimony you gave on direct examination about these various informal gatherings that were had by the employees from time to time discussing

these various matters that were under discussion involving the union and other things.

Was that interfering with the work of the company, Mr. Halpern?

A. It sure was, and I broke it up whenever I could.

Q. Did you make some statements to Sid Appel and other members of the union, in April of 1957, respecting the attitude of the company concerning these meetings and the impact it had upon the work stoppages at the place?

A. Yes, I did. I told them that my job is to see that during work hours they work, and I don't care what they do at lunch time, break time, or at home; that I will not tolerate union activities, whether it is any kind of union, during working hours. I told Sid Appel that I would have to let him go, fire him, if he continues with one thing. Let me amplify this.

He had an envelope every afternoon. At two o'clock the boys knew he tore it open and supposedly there was a note in there from the union that was reading, "Not yet, boys." That had meant a strike, whether they walk out or don't walk out. The two hours before he ripped this envelope, the whole place was, you know, anticipating, [fol. 405] and two hours [365] afterwards the word went around, "Not yet." It disrupted my whole work.

Then there was a slow-down, a concerted effort, the way I saw it. "Take it easy. Don't work so fast. Let it build up. Put the pressure on them."

It was my job to see that they worked, that they turned out a day's work for a day's pay. Wherever there were gatherings or phone calls or those other collections they had there, when that took place during working hours, or any other thing, I stopped it.

Mr. Weissman: Mr. Examiner, the answer is full of hearsay, rumors, innuendo. There is very little factual basis in that answer with respect to the question.

Mr. Raphael: I am leading up to something.

Trial Examiner: I think I will let the answer stand. It is true there is some hearsay. Of course, that will not be considered as evidence by me. A substantial part of the answer is responsive.

By Mr. Raphael:

Q. I want to show you Respondent's Exhibit 5 for identification and I want to see if I can refresh your recollection by looking at the date on this telegram whether that refreshes your recollection to give us the time about when you had this discussion with Sid Appel where you testified you threatened to discharge him.

By looking at this, see if it refreshes your memory as to [366] the time when you had that conversation. Look at the telegram.

A. What is the date?

Q. April 19th.

A. That was about the time.

Q. When you had this discussion with Mr. Appel, was that a heated discussion or was it just a normal discussion?

A. I called him quietly into my office. I didn't want to crucify the man. He was a good man. I told him to stop this thing, because I just would have to take action. I practically first pleaded with him. "Cut it out. I got [fol. 406] to get the work out. If you don't I have no choice. I will have to let you go. You don't work, and you just cause trouble."

Q. Following this discussion which you had, as you testified to, with Mr. Appel, did you shortly thereafter receive this telegram or see this telegram?

A. I saw this telegram the day after.

Q. The day after?

A. Well, I wouldn't know the exact date. It was not sent to me. I saw it thereafter.

Q. Was it long thereafter or shortly thereafter?

A. Shortly thereafter.

Q. There is a reference here to chief engineer. Are you the chief engineer?

[367] A. I sometimes assume this title.

Q. This telegram was shown to you by whom?

A. I believe Mr. Finkel showed it to me. He wanted to know what was going on. He was upset.

Mr. Raphael: I offer this in evidence.

Trial Examiner: Any objection?

Mr. Weissman: Yes, there is, Mr. Examiner. General Counsel submits that that telegram has no materiality to this case.

Mr. Raphael: It is our contention, Mr. Examiner, that in connection with this matter of refusal to bargain, it is incumbent equally upon the union, as it is upon the employer, to demonstrate an atmosphere of good faith, fair dealing, and civil and gentlemanly handling of their problems, and if a union by its own act and conduct does various things which make a situation of amicable adjustment impossible, they cannot be heard to complain about something which they themselves prevented.

I say that this telegram, along with other evidence which will be given here and after by Mr. Finkel in this case, will demonstrate that far from the company being obstreperous and recalcitrant, it was the union and the various representatives that created what I would call an impossible situation, which by itself prevented the thing which they are now complaining about.

[369] I know of no evidence in the law of contracts which is more poignant than is the evidence that a plaintiff in an action for breach of contract prevented the performance about which he is complaining about.

Mr. Weissman: The date of that telegram, I believe, is April 19th. There were conferences after that date, in addition to which the allegation that the General Counsel has made in this case is unilateral changes in wages and working conditions.

I don't see where it is a defense to this type of an allegation for the company to contend that the union has in effect committed an unfair labor practice.

Mr. Raphael: No. You charged us with an 8(a)(5), which is a refusal to bargain. You have two charges in this case. You have an 8(a)(5) and an 8(a)(1).

Mr. Weissman: The refusal to bargain concerns unilateral changes in working conditions.

Mr. Raphael: No.

Mr. Weissman: In my opinion, the argument that Mr. Raphael makes is not a proper argument. But more specifically, with respect to this telegram, I cannot see the materiality of this telegram with respect to the overall bargaining which occurred subsequently to this telegram.

Mr. Raphael: We are going to show that the bargaining that occurred subsequently to this telegram was in a highly [fol. 408] [369] strained atmosphere which had been

building itself up as a result of this I would call offensive attitude that was taken by a host of people, as a result of which it got to a point where you just couldn't sit and talk to anybody.

Trial Examiner: The objection is overruled and the exhibit may be received.

(The document previously marked for identification as Respondent's Exhibit No. 5 was received in evidence.)

By Mr. Raphael:

Q. In the course of your direct examination you referred to the fact that the company had lost a good deal of men in your division who left during, as you termed it, this hullabaloo.

A. That's right.

Q. By "this hullabaloo," I assume you refer to this labor unrest that resulted from this whole series of events which are now the subject matter of this proceeding.

A. I do.

Q. During the early part of 1959 and coming [illegible]wards the summer of 1959——

A. 1959?

Q. 1957—approximately how many men in your unit would you say were employed, roughly?

A. Fifty; something like that.

Q. Was your company very busy then? Did you have a lot of [370] work?

A. They were loaded with work. It was never as loaded with work as at that time.

Q. Did you have a fairly good idea of what employment conditions in the immediate market were for men performing the type of services that you required in your division? Was it a tight market? Was it an easily-acquired market, or what?

A. It was practically impossible to hire an experienced man. I never yet could get one.

Q. Were you running any ads from time to time?

A. We ran ads. We worked with three employment [fol. 409] agencies. We tried to find out if there were any men that had left the industry that wanted to come back. No results.

Q. At or about that time, is it not a fact that there were big ads in the "Times" and in the "Tribune" by the various airplane manufacturers and other companies advertising for the same type of help that you were employing in your plant?

A. Correct. It was one of the main reasons, I guess, we couldn't get anyone.

Q. Is it a fair statement, then, that you reached a sort of a point of frustration in employing new men for your department?

A. Many times.

Q. I show you a sheet bearing the date January 27th, 1959 [371] and purporting to be a schedule of employees who left Williamsburg between January and August of 1957, and ask you whether by looking at this sheet——

Mr. Raphael: May I mark it for identification first?

Trial Examiner: That will be Respondent's Exhibit 7.

(The document above referred to was marked as Respondent's Exhibit No. 7 for identification.)

By Mr. Raphael:

Q. I ask you whether by looking at Respondent's Exhibit 7 you recognize the names of those people that are listed therein.

A. I recognize the names.

Q. Are those people people that were employed in your division of which you were the chief?

A. They were.

Q. As you read that list, do you know as a fact that those people did or did not leave Williamsburg during the relevant times indicated therein?

A. With the exception of two, which I laid off myself because their work wasn't good. They didn't get no raise, either.

Q. Who were those two?

A. Hankf and Frederick J. Smith. They just didn't work out.

Q. Apart from those two?

[372] A. All the others, they just left. They quite on me. Some of them were excellent men, which I gave a lot of increases to keep them.

[fol. 410] Q. You couldn't hold them?

A. No.

Trial Examiner: What period does that cover?

Mr. Raphael: January to August of 1957.

The Witness: January to August of 1957.

Some of the names here are those that you (referring to Mr. Weissman) asked me about, big increases. They left. There was Keil and Luizer.

By Mr. Raphael:

Q. Did you have any discussions with any of these employees indicated on Respondent's Exhibit 7 before they left, trying to hold them there?

A. Every one of them. I told them to stay on. This unrest will be settled soon. After all, you got seniority in the place. You got a future. The ones that left, I didn't make out so good with.

Q. Were you able to replace those people that left?

A. Only with green help, at a tremendous cost to the company.

Mr. Raphael: Mark this as Respondent's Exhibit 8, please.

(The document above referred to was marked as Respondent's Exhibit No. 8 for identification.

By Mr. Raphael:

[373] Q. I also show you a sheet bearing the date January 27, 1959, Respondent's Exhibit 8 for identification, purporting to contain a list of personnel ostensibly in your department who left the company between July and September of 1956, and I ask you whether you recognize those names indicated on that exhibit.

A. I do.

Q. July was the time when we had the election before the Board?

A. That's right; around this time.

Q. You have four that left then, and three in September?

A. That's right.

Q. Were any of these people good people, good mechanics, good draftsmen?

A. Some of them were.

[fol. 411] Q. Was there a scarcity of qualified and competent technical employees in that part of 1956?

A. Definitely.

Q. Did you have any discussions with these people at that time trying to keep them there?

A. Nearly in every case.

Q. I take it you met with no success?

A. That's right.

Q. This schedule of employees who left between January and August of 1957 comes to nineteen employees.

[374] A. I had fifty all told. Now you know what I was up against.

Q. There has been some testimony given in this case before you testified by other witnesses concerning a meeting that was held during this coffee break in July of 1957.

Mr. Weissman: I am going to object to that as misstating the fact to begin with.

Mr. Raphael: I will withdraw the question.

By Mr. Raphael:

Q. There has been some testimony given here by others. You were questioned about it on direct examination by Mr. Weissman. It was my impression that you had testified that there was some meeting in July of 1957——

A. August.

Q. Was it August?

A. August.

Q. Some meeting where you didn't want to get yourself involved and you didn't stay there. Do you recall that?

A. Yes.

Q. There has been some testimony given here in this case heretofore by Mr. Jacobson and others that they attended this sort of a conference or gathering, or whatever you want to call it.

Did you know that Mr. Jacobson had attended such a meeting?

A. No.

[375] Q. Did Mr. Jacobson tell you about it?

A. No.

Q. Did you discuss it with him at any time prior thereto?

A. No, sir.

[fol. 412] Q. Mr. Jacobson was in your room, as I get it from the testimony.

A. He wasn't the only one in the room.

Q. Who else did you have in the room?

A. There was a typist in my room. There was a time clock in my room. I call it an office, but it was more of a corridor. There were salesmen in and out. Everybody punched in and went out.

Q. Did you and Mr. Jacobson spend your days or parts of it in discussing union matters?

A. No. Mr. Jacobson was trying what I could call to work on me. He was a union member, a very strong one, and every once in a while he would say, especially when people quit, "You see, Ernie, why don't you go and tell the boss"—that's the way we referred to Mr. Finkel—"to settle it?"

I said, "Go in yourself and tell it to him. I am not concerned with this."

Mr. Jacobson, like all the rest of them, got together with them during breaks, and when I approached, the discussion changed. I could see this.

Q. Mr. Jacobson testified here that he was a senior [376] draftsman. Is that correct? Was he a senior draftsman?

A. He was, yes; a lister.

Q. Did he also handle some duties that a leadman generally handles?

You know what a leadman is, don't you?

Mr. Weissman: Mr. Examiner——

Mr. Raphael: All right, all right, I will withdraw the question.

By Mr. Raphael:

Q. Did Mr. Jacobson have the right to fire people?

A. Nobody had the right but me.

Q. Did you pay any attention to Mr. Jacobson on hiring and firing?

A. I paid no attention. He wasn't qualified technically or otherwise to check a man's ability. He never did drawing. He was a lister. He was strictly giving telephone answers to customers, messages. That was his main job.

[fol. 413] Q. He couldn't pass on the qualifications of a draftsman, could he?

A. No, sir. He never did a drawing.

Q. How about Wisniewski? Did he have the right to hire and fire?

A. No, sir.

Mr. Weissman: Mr. Examiner, at this point I would point out that Mr. Raphael is asking leading questions and he is [377] now on direct examination.

Mr. Raphael: I am on cross.

Mr. Weissman: No; you are on direct. This is new material.

Mr. Raphael: You asked the witness questions about statements he made in a paper which are chock full of statements that you read about Jacobson's authority.

I consider, Mr. Trial Examiner, that my cross examination is most appropriately directed to those matters.

Trial Examiner: I don't recall that he questioned him about Jacobson's authority.

Mr. Raphael: It is in the statement.

Trial Examiner: It was rejected.

Mr. Raphael: He read from the statement and he asked questions from there.

Trial Examiner: If he did, all right.

Mr. Weissman: First, as to the question with respect to Mr. Wisniewski, I asked no questions. Secondly, this is a 43(b) witness. I believe he is on direct examination.

Trial Examiner: If he is cross examining on a matter you touched upon, if counsel tells me that you did—did you ask about Jacobson?

Mr. Weissman: I asked whether Jacobson was his personal assistant and he said yes. I asked no questions about Wisniewski.

[fol. 414] [378] Trial Examiner: The objection is sustained as to Wisniewski.

By Mr. Raphael:

Q. Was there anybody in your division other than you who had the right to hire and fire?

A. Nobody.

Q. Was there anybody in your division other than you

who had the right to recommend discharges and hiring that you paid any attention to?

A. Nobody.

Can I amplify that?

Q. Yes.

A. Very often somebody brought somebody in and said to me, "Well, it is a friend of mine. I want you to get him a job." If you consider that is recommendation, then I say yes.

Very often a checker brought over work to me and said, if I might say so, "He is from hunger. He is no good." He showed me the work. I look at it and said, "Never mind. I will make a note of it," and I formed an opinion. If this is recommendation, it was brought in. That is the way I formed my opinion.

Q. When you say "from hunger," I suppose you mean it in the colloquial vernacular sense?

A. Exactly.

Q. From time to time were new employees or employees [379] desiring promotion tested for their ability?

A. New employees?

Q. New employees.

A. They didn't ask for promotions. They asked for jobs.

Q. I mean in cases of people that wanted to be promoted from one classification to another.

A. If they came to me and they asked for it, I usually took the last jobs they did, because to put them to a test, he would be on his best behavior. I took his last ten or fifteen jobs and looked over his workmanship, what kind of work he is doing. If he was in the bracket where he was being checked, I checked with his checker and then passed him.

[fol. 415] Q. In the matter of giving tests and various job classifications to new or prospective employees, who would handle that? Was that under your supervision?

A. That's right.

Q. Did you delegate that work in turn to somebody to assist you in doing that?

A. New employees?

Q. Yes.

A. I had it like this: I set up a test. A man had to draw a certain isometric and fill out a certain schedule,

and then sometimes an experienced man, sometimes Wisniewski or some other checker would take the man and give him the papers, [380] and "When you are through with it, bring to me," and they just supervise it. They do it on their own. They brought it to me and then I passed on it, and based on this, I would hire them or not.

Q. In other words, am I to understand from your testimony that this was a form of standard test that you had developed?

A. Yes.

Q. They were merely executing your orders?

A. That's right; whoever was free at that time. Usually, it was a senior man.

Mr. Raphael: I have no further questions.

Mr. Weissman: May we adjourn for lunch at this time?

Trial Examiner: We will recess until 1:30.

(Whereupon, at twelve o'clock noon, a recess was taken to 1:30 o'clock P. M. of the same day.)

[fol. 416] [381] After recess.

(Whereupon, at 1:30 o'clock P. M., the hearing was resumed, pursuant to the taking of the recess at twelve o'clock noon.)

Trial Examiner London: The proceeding will be in order.

Ernest Halpern resumed as a witness called by and on behalf of the General Counsel, and having been previously duly sworn, was examined and testified further as follows:

Re-direct examination.

By Mr. Weissman:

Q. Is it my understanding of your testimony that you have testified that you did not read this affidavit prior to signing it?

A. That is correct.

Q. And you did testify that you signed every page?

A. That's right.

Q. And you have also testified that at the time you signed this affidavit you were calling yourself at times chief engineer of the company?

A. Chief draftsman, chief engineer. The custom was chief engineer.

Q. Mr. Halpern, here is the original affidavit and here is a typewritten copy. I refer you to page 3 of the affidavit.

A. Of the typewritten copy?

[382] Q. Yes. I refer you to the final sentence in the second paragraph, which states: "Prior to April, 1957 increases were granted as described above on an individual merit basis within the discretion of management." Then it says: "See also handwritten page 11 below."

Please refer to handwritten page 11.

A. It is in here (indicating original)?

[fol. 417] Q. That is correct. And also refer to page 5 of your typewritten copy. You will find that the paragraph before the last on page 5 states:

"As to the review of wage policy prior to April, 1957 as discussed on handwritten page 6 above, the older policy was to review wages under sixty-five dollars per week every three months. Wages above sixty-five dollars per week were reviewed every six months."

Is this true?

A. A couple of years ago I really couldn't recall exactly whether it was sixty-five or seventy. It was in the lower brackets, though. Wages were reviewed every three months, about sixty-five or seventy-five. I couldn't tell you exactly.

Q. What you are saying, then is what I have just read is substantially true?

A. I haven't said this. I said it could be true. I said to my best recollection it was in the neighborhood of sixty-five [383] to seventy-five.

Q. So that with the exception of some differences with respect to the amounts of money, the remainder of the statement is true?

A. That's right.

Q. Mr. Halpern, I refer you to some of your testimony on you might say cross examination with respect to the meeting with Mr. Raimist, which you testified I believe occurred on November 15th.

A. I don't know the date. The latter part of the year.

Q. You don't know what month it was?

A. I would say November it was. I don't know the day. I didn't keep no records. I know it was in the latter part of 1956.

Q. But you think that November might be an accurate date?

A. It might be, yes.

Q. You also testified that there was only one meeting?

A. Only one meeting.

Q. And that this meeting occurred in Mr. Raphael's office?

A. Correct.

[fol. 418] Q. Do you recall meeting with Mr. Raimist the prior day in the company's office, in Mr. Finkel's office?

A. No, I don't recall.

Q. Do you have any recollection of sitting down with Mr. Raimist briefly and discussing classifications on the prior [394] day?

A. No, sir.

Q. You have no recollection?

A. I have a recollection that I never discussed with him this prior to the meeting.

Q. Do you have a recollection of a meeting with Mr. Raimist the prior day?

A. No, sir.

Q. None whatsoever?

A. I have no recollection. I know I never discussed classifications with him either before this meeting. The first time I talked about classifications with Mr. Raimist was at Mr. Raphael's office.

Q. Mr. Finkel sent you to this meeting at Mr. Raphael's office?

A. Yes.

Q. You went there with the expectation of discussing classifications with Mr. Raimist; is that correct?

A. Those were my instructions, to do so.

Q. You were limited to that one subject?

A. That is all, technically.

Q. When you went to meet with Mr. Raimist in Mr. Raphael's office, had you prepared yourself for this meeting in some way?

A. Yes, sir.

[385] Q. You had prepared yourself with the exhibit that was shown to you by Mr. Raphael in his examination?

A. That is correct. I drew this up.

Q. Where is the original of this document?

A. I don't know. I didn't keep no records.

Q. Did you give the original to anybody?

A. I couldn't recall what happened to the paper itself.

Mr. Raphael: Mr. Raimist has a copy of it.

By Mr. Weissman:

Q. Are you certain that is the original of that document?

A. This is a photostat.

[fol. 419] Q. Are you certain this is a photostat of the original?

A. Yes.

Q. Was there any other writing on there besides that?

A. Any other writing? No, sir.

Q. Were there notations on there?

A. I didn't make any.

Q. You made no notations whatsoever?

A. Not that I can recall.

Mr. Weissman: I now call upon Mr. Raphael to produce the other document which he has a copy of and which is a photostat of that document.

Mr. Raphael: I haven't been able to find it. I don't have it.

Mr. Weissman: I just saw it five minutes ago.

[386] Mr. Raphael: You did not. You have been looking through my papers. You were not supposed to snoop. I caught you snooping through my papers.

Mr. Weissman: That is not true.

Mr. Raphael: You are a snooper.

Trial Examiner: You are asking for what?

Mr. Weissman: Mr. Raphael has another photostat of this which is different than this one.

Mr. Raphael: It has nothing to do with this. It is something we did our own writing on, and if you would have

asked me like a gentleman, I would have told you. You did it in a sneaky way and I didn't like it.

Mr. Weissman: That is not true.

Mr. Raphael: I asked you to give me back a paper that you took from here.

Mr. Weissman: I did not take it. It was handed to me. I had no idea it was yours.

Trial Examiner: That is enough. Proceed. Apparently he has no other papers, as he says.

Mr. Raphael: I have no other papers.

By Mr. Weissman:

[fol. 420] Q. Again I ask you where is the original of this photostat?

A. Again I tell you I don't know.

Q. What did you do with it?

A. I don't know what I did with it two years ago, with a [387] piece of paper that had no value thereafter. I really cannot recall.

Q. You have no recollection?

A. No.

Q. Did you give it to Mr. Raimist?

A. I gave him one set. I don't know whether it was the original or a copy. I gave him a thing like this.

Q. You mean you had more than one set?

A. I had a copy of it for myself. I imagine so. Again, I am under oath. I cannot tell it to you unless I know for sure.

Q. You say you imagine so. You don't know?

A. I know I gave Mr. Raimist one set, like a copy, you might say. Whether this was the original or a carbon copy, I don't remember.

Q. Did Mr. Raimist return it to you?

A. To my best recollection, no.

Q. At [illegible] you had the original with you?

A. You are cutting it awfully fine. I really don't know.

Q. You really don't know?

A. I really don't know whether it was the original or a copy, or whatnot.

Q. Mr. Halpern, you testified that what you were trying to do was to conform these descriptions to what was happening in the plant. Is that correct?

[388] A. In the drafting room.

Q. In the drafting room?

A. That's right.

Q. You stated Mr. Raimist had other ideas on the subject; is that correct?

A. He had a paper. He had his classifications written out on this paper.

Mr. Raphael: Mr. Examiner, I have here from our file not the original, but a copy of which Exhibit 6 is a photostat.

If you want it, I offer it to you, Mr. Weissman. You can use it.

[fol. 421] Mr. Weissman: I am not interested in copies of photostats.

Mr. Raphael: The original might have been given to Mr. Raimist. We don't recall.

Mr. Raimist: It was not given to Mr. Raimist.

Mr. Raphael: I don't know. I do have a copy of which this is a photostat which comes from our file. If you want it, you can have it. If you are looking for a search of the truth, here it is.

Mr. Weissman: If you were interested in the truth, you would hand over the document you have in your possession.

Mr. Raphael: I cannot give you what I don't have. The trouble is you look at things and you get half-conclusions.

[389] Mr. Weissman: May I have the last question and answer, please?

(Record read.)

By Mr. Weissman:

Q. Mr Raimist took a position that was different than yours?

A. Yes.

Q. Both Mr. Raimist and yourself became excited as you were talking back and forth; is that correct?

A. No.

Q. You did not become excited?

A. No.

Q. You were calm?

A. That's right.

Q. Only Mr. Raimist became excited?

A. That's right.

Q. What was he excited about?

I withdraw the question.

The discussion at this conference between yourself and Mr. Raimist concerned classifications. Is that correct?

A. Correct.

Q. When you state that Mr. Raimist became excited, he became excited because of the particular discussion that was taking place at the time; is that correct?

A. No.

Q. Was Mr. Raimist happy with your ideas as to how the [390] classifications should be written up?

[fol. 422] Mr. Raphael: I am going to object to the form of the question.

Trial Examiner: Sustained.

By Mr. Weissman:

Q. Did Mr. Raimist agree with your description of the type of classifications that should be worked out?

A. No.

Q. He did not?

A. No.

Q. And he argued against it; is that correct?

A. No.

Q. What is correct?

A. He just refused to discuss it. He didn't argue. He said, "That is nothing. We ain't going to discuss this."

Q. Did Mr. Raimist tell you what he had in mind?

A. Yes. He gave me this paper.

Q. Mr. Halpern, I refer you to the first page of the typewritten copy, which states in the third paragraph:

"I have under my supervision four departments as follows: Listing Department, Detailing Department, Apartment House Department, Elevator Section. Each of these departments or sections is directly supervised by its own department head who are as follows: Detailing, Eddie Wisniewski; Listing, Peter Manzak; Apartment House, Herman Brav; Elevator, [391] Morris Kline."

Is that true?

A. Yes and no.

Q. What part is yes?

A. In technical questions, those men enumerated here advised the less experienced men in wages, grievances, complaints, or if they disagreed with the so-called department heads, they came to me.

Q. Mr. Halpern, these people are called by you "department head" in this particular portion of the affidavit; is that correct?

Mr. Raphael: I object to the form of the question. Mr. Levy wrote this paper to suit himself. I believe that the witness testified that everything he stated was not incorporated in this affidavit.

[fol. 423] Trial Examiner: He said it was read over to him.

Mr. Raphael: That is right.

Trial Examiner: You may answer the question.

The Witness: Squad leaders and department heads. Take your pick; either way they were called.

By Mr. Weissman:

Q. In portions of this affidavit you refer to them as department head and in other portions as squad leader. Are they one and the same people?

A. That's right.

Q. Mr. Halpern, you were shown a telegram which was not [392] sent to you but which you saw, and you stated that this refreshed your recollection concerning an incident with Mr. Appel.

A. That's right.

Q. Do you know of your own knowledge whether this telegram was a result of this talk that you had with Appel?

A. I wouldn't know. Mr. Raimist did not consult with me when he sent it.

Q. So you really don't know?

A. I don't know why he sent it.

Q. You also testified there was some problem about a slow-down.

A. That's right.

Q. Did that occur shortly before this telegram was sent?

A. I would say all through the time, at varying intensity, there was a slow-down, but I felt it more during the time when I had a lot of work on the books.

Q. Specifically with respect to this telegram, do you recall it occurring shortly before this telegram was sent?

A. I couldn't answer it. I just wouldn't know.

Q. You just don't know?

A. It was all through the time. Sometimes it was harder, sometimes it was a little less.

Trial Examiner: I take it you are referring to Respondent's Exhibit 5.

[393] Mr. Weissman: That is correct.

By Mr. Weissman:

[fol. 424] Q. Specifically, with respect to the slow-down, do you have any recollection of warning employees in any department that they would lose either overtime or their jobs if a slow-down continued?

A. Not particularly; I really don't.

Q. Do you have any recollection with respect to Mr. Wisniewski's department specifically?

A. No.

Q. You were also shown a list of employees dated January 27th, 1959, drafting room personnel who left during 1956. You identified that these were the employees who left from July until apparently December of 1956.

A. I don't know whether this list is all-inclusive. I have no records available. It could have been that more left.

Q. Or less?

A. It could be. I know those people left. Whether it was in '56 or '57, I don't know. You can check the records.

Q. All you know is that these particular people left, but you don't know when they left?

A. I recall their leaving during this time, where they lapped over.

Q. In the 1957 list, which you also identified, you referred to two employees that had been discharged.

A. That's right.

[394] Q. Can you tell us how many of those were discharged and how many left on their own accord, if you know?

A. It is a little too far back. I really don't recall this one. The other two fellows stood out in my mind because they made a few very bad mistakes in their work and I had to let them go.

Q. So that you don't know which of these employees left?

A. To my best knowledge, all of those quit. I do not recall laying any one of them off.

Q. Do you or do you not know whether they left on their own accord or were fired?

Mr. Raphael: Objected to as already answered. I submit, Mr. Examiner, that the last question and answer be read.

[fol. 425] Trial Examiner: I think he said it was to his best knowledge.

Mr. Weissman: All right.

By Mr. Weissman:

Q. Referring to the list of 1957 employees that left, just look over it once more and see whether you can recall whether any additional employees were discharged in addition to those two.

A. No.

Q. Are you sure?

A. I am sure.

Q. You are sure of this one?

A. Those two fellows were the only ones.

[395] Q. Are you sure of the 1957 employees as against the 1956 employees?

A. I can't weigh them whether I am a little surer or a lot surer.

Q. Are you or aren't you?

A. I would say the same.

Q. You also testified with respect to your office, and you stated that other people occupied this office.

A. That's right.

Q. Is it true that there were two other desks in the office besides your own?

A. Three.

Q. Three others?

A. Yes.

Q. Would you tell us who sat at those desks?

A. At my desk I sat, when I was around; Herbie Jacobson at his; then the typist for the whole drafting room; at the third desk for a while we had an office boy there when

we were crowded. Later on we had a fire underwriting inspector sitting there.

Q. Were they there for a short time or a long time?

A. Constantly. It was very crowded.

Q. So most of the time you had four desks in the office?

A. Always.

Q. You also testified that Mr. Halpern was your personal [396] assistant.

Mr. Raphael: He is Halpern.

By Mr. Weissman:

Q. That Mr. Jacobson was your personal assistant.

[fol. 426] Can you just tell us what you mean by that?

A. When a customer called up with complaints, he took the messages and conveyed them to me. We looked over back charges. Mainly, it was customer relations. That was his main thing. I wasn't always around. I was on the floor and all over. Somebody had to take a message.

In addition to that, he coordinated. By this I mean the orders came in from the front office into my office. He graded them out for me. I looked them over. It took a lot of clerical load off my shoulders. I will put it this way: technical and clerical; a mixture of both. Does that help you?

Q. I understand what you said. I still ask you again is this all you mean by personal assistant?

A. It was an eight-hour job. I had three phones in my office.

Q. Was he the only one who actually assisted you personally?

A. Yes. I had on my desk three phones. It was a full day's work to answer them, and an intercom.

Q. But with respect to Mr. Jacobson, you say that he was the man that was your right-hand man, you might say?

[397] A. Not necessarily. On technical questions I wouldn't even ask his advice. He just didn't know enough.

Q. But with respect to what?

A. That I outlined.

Mr. Raphael: I think that he answered it. He said technical and clerical, he took the burden off his shoulders.

By Mr. Weissman:

Q. You testified about certain tests which you set up for new employees. You said that these tests were given by department heads and Mr. Jacobson.

A. I didn't say Mr. Jacobson.

Q. You didn't?

A. No, sir, I haven't.

Q. You said department heads?

A. I haven't said this, either. I said the senior man or sometimes the department heads, whoever was available.

[fol. 427] Q. You interviewed the employee yourself after that?

A. Before that. Some of them even go to the test, you know. Afterwards, after I looked at the test, I interviewed them and gave them some talk about wages, and so on.

Q. When these other people came to you with the test, did they say anything to you at that time?

A. Usually I find them on my desk. The guy waited for me and I was busy and he came back. The man who took the test, that is, I walked over to him and said, "What did you do up here? What is this"? and I kept on talking to him. The man [398] who gave him the paper, he has to explain him. This is an architectural plan, this is an opening, this is a schedule, this is a hand. He set up one line for him. He says, "Now you are supposed to do the next one," and he left him. When the man is finished. I went over there and I checked it out.

Q. You didn't talk to the individual that gave him the test?

A. No.

Q. Not at all?

A. No.

Q. At no time?

A. No.

Q. Never?

A. He had nothing to do with the test. The man made the test. That is why I gave him the test, to see what he is doing.

Q. The individual who gave the applicant the test, did he bring the test to you to look at?

A. In most cases, no. It was right there on the desk.

Q. Did he sometimes bring it to you?

A. Sometimes he sent a man with the test out into my office.

Q. Did he come sometimes himself as well?

A. He might have passed by, but he never interviewed the man. He never could give me any opinion about him.

Q. When you say he never interviewed the man, how do you [399] know? Were you there?

A. It was his job just to set him up, show him the test [fol. 428] and set him up. It was none of his business to interview him or do anything of this sort.

Q. Is it your testimony that at no time did this interviewer come to you with the test and talk to you about it?

A. At no time? There you got a big question. I can't answer no time.

Q. In other words, you don't know?

A. I don't say that. I said to my recollection, not. I worked for this company nine years and a lot of things happened.

Q. In nine years, to your recollection this never happened?

A. As I can recollect nine years, the answer is that it didn't.

Q. Mr. Halpern, you testified that in April you told Appel that he was not to conduct union activities on company time?

A. That's right.

Q. Yet in your testimony in the direct examination you stated that in July you were aware that there was dissension and the employees were going to do something?

Mr. Raphael: I object to the form of the question. It is argumentative: yet.

Trial Examiner: You better rephrase your question.

Mr. Weissman: Yes.

By Mr. Weissman:

[400] Q. Is it also your testimony that in July you were aware that the employees were going to do something about the union situation in the plant?

A. I was aware that there was dissension, that they wanted to do something about it. I did not know whether they were going to.

Q. I read to you from your affidavit, Page 4, starting with "During" in the second paragraph, line six:

"During the last week of July, 1957, I knew also that the dissension among the employees had reached the point they were going to do something about it during that week at the coffee break, which coffee break runs normally from ten to fifteen minutes at four P.M."

[fol. 429] At that time did you take any measures to warn the employees not to do this on company time?

A. Coffee break was their own time, their own business.

Q. You considered the coffee break to be not company time?

A. That is right.

Mr. Weissman: No further questions.

Re-cross-examination.

By Mr. Raphael:

Q. Mr. Halpern, you were questioned about four people, Eddie Wisniewski, Peter Manzak, Herman Brav, and Morris Kline. Is Wisniewski an hourly-rated employee?

A. Yes, he is.

Q. Does he punch in and does he punch out on a time clock?

[401] A. Yes, sir, he does.

Q. And he gets paid for the hours shown on his time card?

A. Correct.

Q. Does that apply to Manzak?

A. It does.

Q. Does that apply to Brav?

A. It does.

Q. And does that apply to Kline?

A. It does.

Q. And does that apply to Jacobson?

A. It does.

Q. Are you a salaried employee?

A. I am.

Q. Were you in 1956 and 1957 salaried?

A. I was.

Q. Were you required to punch in and out on the time clock?

A. No, I was not.

Mr. Raphael: At this time I would like to offer in evidence Respondent's Exhibits 7 and 8 respectively, heretofore marked for identification.

Mr. Weissman: Mr. Examiner, I will object on the basis that there is no information with respect to whether this is all or some of the employees who left or were discharged in those two years.

Mr. Raphael: I can say this to you, Mr. Weissman: When [402] Mr. Finkel is on the stand, this will be proven to be correct factually. If you want to wait until then, it is perfectly all right.

[fol. 430] Mr. Weissman: Why don't you wait until then?

Mr. Raphael: All right.

I want to mark for identification three sheets on the stationery of Williamsburg Steel Products Company and being a typed carbon copy of an original, which we do not have in our possession, and being the copy from which the photostat, Respondent's Exhibit No. 6, was prepared.

Trial Examiner: In other words, Respondent's 6 is a photostat of the proposed Respondent's 9?

Mr. Raphael: That is right; and which is the exhibit which I tendered to General Counsel during the midst of his re-direct examination of Mr. Halpern.

Mr. Weissman: Mr. Examiner, I am going to object to the receipt of that document in evidence.

Mr. Raphael: I just asked that it be marked for identification.

Mr. Weissman: All right.

(The documents above referred to were marked as Respondent's Exhibit No. 9 for identification.)

Mr. Raphael: I now offer it in evidence.

Mr. Weissman: Mr. Examiner, I object to the receipt of [403] that document in evidence. It is not an original. There is no testimony with respect to what happened to the ring. I think under the best evidence rule this document is not admissible at this time.

Trial Examiner: When was Respondent's Exhibit 6 prepared, the photostat?

Mr. Raphael: It was taken from Respondent's Exhibit 9.

Mr. Weissman: Mr. Examiner, is it my understanding that Respondent's Exhibit 6 is for identification only, that it has not been received in evidence?

[fol. 431] Trial Examiner: That is right.

What is the purpose of 9, Respondent's Exhibit 9?

Mr. Raphael: Actually, if they are going to raise a fuss about it, from my point of view, evidentially speaking, it needn't be in evidence, because I think the record is replete with sufficient testimony to indicate that at this meeting between Messrs. Raimist and the others and this gentleman, all of the pertinent material which is contained in this exhibit for identification was covered.

I thought for the purposes of having a completed record that perhaps we should have it in. But if there is serious objection, I won't press the point. It doesn't mean that much.

Trial Examiner: Does your statement cover both Respondent's Exhibits 6 and 9 for identification?

[404] Mr. Raphael: Yes.

Trial Examiner: Do you withdraw it.

Mr. Raphael: I will stand by the offer, but if there is any serious problem, I won't get excited about the ruling.

Mr. Weissman: Mr. Examiner, I renew my objections.

Trial Examiner: To which?

Mr. Weissman: To both 6 and 9.

Trial Examiner: What is the basis of your objection?

Mr. Weissman: This isn't an original. It is a copy and a photostat of a copy. There is no testimony here as to what happened to the original and whether the original is in existence.

Trial Examiner: I think that counsel has stated the original is not in his possession.

Mr. Raphael: That is right.

Trial Examiner: Is it in the possession of your client?

[fol. 432] Mr. Raphael: No. I have made a search for it. Otherwise, I would produce it. I have no reason not to produce it.

Trial Examiner: Under the circumstances, the objection to Respondent's Exhibit 6 will be overruled, and I think Respondent's Exhibit 9 should be withdrawn.

Mr. Raphael: I withdraw 9.

Trial Examiner: There is no need to clutter up the record.

[405] (The document previously marked for identification as Respondent's Exhibit No. 6 was received in evidence.)

(The document previously marked for identification as Respondent's Exhibit No. 9 was withdrawn.)

Trial Examiner: Is there anything further?

Mr. Raphael: I have nothing else.

Trial Examiner: You are excused, Mr. Halpern.

(Witness excused.)

Mr. Weissman: I would like to call Edward Thibou to the stand.

EDWARD THIBOU called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

• • • • • • •

Direct examination.

By Mr. Weissman:

• • • • • • •

[417] Q. Mr. Thibou, do you recall having a conversation with Mr. Halpern on July 13th, 1957 about a contract?

A. No, I don't.

[fol. 433] Q. Do you have a recollection of Mr. Halpern calling you into his office to talk about a contract?

A. No. I don't recall him talking about a contract?

Q. Do you have any recollection of Mr. Halpern stating that he and the boss had been working on a company contract?

Mr. Raphael: I am going to object to the question as leading and suggestive. The witness has testified he had no such conversation. Apparently counsel is not happy with the answer and he is now trying to put words in the mouth of the witness.

He definitely is not an adversary witness: He hasn't made him such and I think the questions are wholly leading and suggestive.

Mr. Weissman: The witness has testified he doesn't recall. I am testing his memory.

Trial Examiner: Go ahead.

By Mr. Weissman:

Q. Mr. Thibou, do you have any [418] recollection of ever making a statement to the effect that Mr. Halpern called you into his office and said that he and the boss had been working on a company contract?

Mr. Raphael: I am going to object to that question as being leading and suggestive, and as incompetent. It is an attempt made by counsel to impeach his own witness. The witness has testified that he never had such a conversation.

Trial Examiner: He says he doesn't recall.

Mr. Raphael: His first question was, did you ever have a talk with Mr. Halpern on July 13th about a contract. He said he did not have such a talk.

Trial Examiner: The objection is overruled. He may answer.

[fol. 434] By Mr. Weissman:

Q. Do you recall ever making that statement, Mr. Thibou?

A. Could you repeat the whole question?

Q. Do you ever recall making a statement that on Saturday, July 13th, 1957, Mr. Halpern called you into his office and said that he and the boss had been working on a company contract for quite some time and they had stayed up all night one night to work on a contract?

A. Whatever was stated was given to Mr. Levy. At the present time I don't recall.

Q. Let me ask you this: Did you sign an affidavit on July 30th, 1957?

A. I wouldn't remember the date.

Q. I show you this document.

Mr. Weissman: I would like to mark it for identification.

Mr. Raphael: It has been marked.

Mr. Weissman: This is another one.
Trial Examiner: This will be 38.

(The document above referred to was marked as General Counsel's Exhibit No. 38 for identification.)

Mr. Weissman: This is a statement which is dated July 30th, 1957 and purports to be an affidavit signed by Edward Thibou.

Mr. Raphael: Who is the Notary?
Mr. Weissman: It was notarized before Irving Marinoff.

By Mr. Weissman:

Q. Mr. Thibou, I show you this document and ask you whether this is your signature on the bottom.
A. The signature is mine.
Q. I ask you whether you had this document notarize yourself.
A. I don't remember whether I did or not.
Q. Did you sign this statement?
A. This is my signature.
Q. Did you sign it before a Notary?
A. Where is the Notary's handwriting?

[fol. 435] [420] Q. Irving Marinoff, Notary Public State of New York, No. 31-7718000, qualified in New York County, Certificate Filed with the New York County Clerk and Register, Commission expires May 30, 1958.

Mr. Raphael: Does he work for the Board?
Mr. Weissman: No.

A. I don't remember whether I had this notarized or not.

Q. This is not a statement which you signed before Mr. Levy?
A. I thought it was.

Trial Examiner: He is asking you whether it is or it isn't. Was this signed before Mr. Levy?

The Witness: I thought he said this is not a statement. That is not a question.

Trial Examiner: Was it or wasn't it a statement signed before Mr. Levy?

The Witness: This I don't remember. When you first

started, I thought you said it was another testimony given before Mr. Levy.

By Mr. Weissman:

Q. There was another statement which we referred to earlier which was signed by you before Mr. Levy. That is dated September 23, 1957. The second statement which I referred to is dated July 30th, 1957. I also note that there are changes made on the face of this document. Murray Kline's name is misspelled and there is the correct [421] spelling above the typewritten name.

Is that your iniital next to each one of these changes?

A. Yes.

Trial Examiner: You are referring now to 38?

Mr. Weissman: I am referring now to 38, that is correct, sir.

Mr. Raphael: I am going to object to any statement be-[fol. 436] ing read to this witness as impeaching this witness. If he wants to let the witness read the statement, all right.

Trial Examiner: There is nothing before me at this time.

By Mr. Weissman:

Q. Mr. Thibou, would you read this paragraph, starting with the word "On," and read down to the word "contract" over here? Just read these first two sentences over here.

(Short pause.)

Did you read it?

A. Yes, I read it.

Q. I ask you again, would you tell us what your present recollection is about this discussion that you had with Mr. Halpern on July 13th, 1957?

A. I think that was the time he called me in to discuss the proposed pension plan that the company wanted—was trying to get worked out for some of the employees of the company.

Q. Tell us what the discussion was between yourself and Mr. [422] Halpern.

A. There wasn't too much of a discussion. He was try-

ing to work up some sort of a pension plan for the men. He asked if I would be interested in it, because I had been working for the company a long time, and that I would benefit from it as well as some of the other men.

Q. Having looked at the affidavit, the statement that you have signed, I now ask you whether you now recall Mr. Halpern making any statement with respect to a company contract.

A. No.

Q. You don't have any present recollection of that?

A. No.

Q. Do you recall Mr. Halpern making any comparisons between the pension plan that was discussed and other pension plans of other unions?

A. He might have compared it with the pension plan of some other unions. This he might have done.

[fol. 437] Mr. Raphael: I am going to move to strike out what he might have done.

Trial Examiner: The motion is denied.

By Mr. Weissman:

Q. Do you recall whether Mr. Halpern stated that he had worked out any of the details for employees with respect to this pension plan?

A. I don't remember it, no.

Q. I refer you to your statement and ask you to read from [423] the word "he" to the word "salary."

(Short pause.)

Do you recall what Mr. Halpern said about having worked out anything for particular employees?

A. No. I don't remember the details now.

Q. What do you recall?

A. I just remember that he mentioned something about the advantages that there would be to certain individuals at certain ages and at certain salaries. As far as details about names, I don't remember that.

Q. Do you recall Mr. Halpern taking you to Mr. Finkel's office?

Mr. Raphael: What date, please?

Mr. Weissman: Saturday, July 13th, 1957.

A. Do I recall it now? No.

Q. I refer you to your statement and ask you to read from the word "he" until the word "time."

(Short pause.)

Now can you answer the question?

A. What was the question.

Mr. Weissman: Please read back the question.

(Question read.)

A. I read there that it says he took me into Mr. Finkel's office and Mr. Finkel wasn't there, and I left soon afterwards, according to what the statement says.

[fol. 438] [424] Q. Is this true?

Mr. Raphael: Is that true?

By Mr. Weissman:

Q. Is the statement you just read true?

Mr. Raphael: I am going to object to the form of the question. It is the witness's recollection, not the truth of the statement.

Trial Examiner: Do you recall Mr. Halpern taking you into Mr. Finkel's office?

The Witness: I don't remember exactly whether he did or not, but from this paper, I assume he must have, because that is what is there.

Mr. Raphael: I move to strike out the words "from this paper, I assume that he did."

Trial Examiner: The motion is denied.

By Mr. Weissman:

Q. Do you recall being taken by Mr. Halpern to Mr. Finkel's office to look at a contract?

A. No. It says in the paper that we went to see about the pension plan and Mr. Finkel wasn't there, so we didn't see him.

Q. I refer to your statement again, your affidavit, and ask you to read from the word "he" down to the word "was."

Mr. Raphael: You have to read the other sentence. You are unfair in your question to this witness. Read the remaining sentence: "However, Mr. Finkel was not there." Read the next sentence. That is what he is trying to tell you.

[425] Trial Examiner: Apparently you are asking what the purpose of the trip was to Mr. Finkel's office. Is that the question?

Mr. Weissman: Yes.

[fol. 439] Mr. Raphael: The question was did he go to Mr. Finkel's office and was he there, and the witness is trying to say he wasn't there.

Trial Examiner: It is apparent from the line of questioning he is trying to find out why Halpern took him to Finkel's office, whether Finkel was there or not.

Mr. Raphael: He doesn't even recollect it, to begin with.

Trial Examiner: That is something different. Proceed.

By Mr. Weissman:

Q. Did you read the statement as I showed it to you?

A. Yes, I read it.

Q. Can you tell us why Mr. Halpern took you to Mr. Finkel's office?

A. I assume from this that we probably went there to see the pension plan. I don't remember.

Q. You don't remember?

A. Reading this over, I mean, I imagine we went to see Mr. Finkel and he wasn't there.

Q. Now that you have read it over, do you recall it?

[426] A. Recall definitely going in there?

Q. Mr. Halpern taking you to Mr. Finkel's office.

A. I imagine after the conference, according to what I read now, we probably went to see Mr. Finkel about the pension plan and from this he wasn't there.

Q. He wasn't there at the time?

A. No.

Q. Did Mr. Halpern say he would show it to you on another day?

A. This I also read just now.

Q. What is your recollection with respect to that?

A. He might have said that.

Q. He might have that that?

A. Yes.

Q. Did you see it on another day?

A. No. I never saw it. That I know for a fact.

Q. Do you recall Mr. Halpern saying that he would show it to you on the following Monday?

A. Do I recall it now? No, I don't recall.

[fol. 440] Q. Would you please read this final sentence over here, from "Halpern" down to "plant"?

(Short pause.)

Do you now recall his telling you that he would show you the pension plan on Monday?

A. He probably said that.

[427] Q. You say he probably said it?

A. Yes.

Q. Do you recall Mr. Halpern saying anything about keeping this matter quiet?

I withdraw the question.

Keeping the discussion quiet?

A. On various occasions he spoke to me and said he didn't want it to get around to the rest of the men until the situation was actually right for the information to be spread around.

Q. Do you recall Mr. Halpern saying anything about this replacing a contract with Local 66?

Mr. Raphael: By "this," you are referring to what? What do you mean by "this"?

Mr. Weissman: I am referring to the witness's testimony with respect to the pension plan.

Mr. Raphael: May I know what the word "this" has reference to? What does "this" mean?

I will object to the form of the question.

Mr. Weissman: I will withdraw the question and rephrase it.

By Mr. Weissman:

Q. Do you recall Mr. Halpern stating that the contract or pension plan would replace a contract or pension plan worked out with Local 66?

A. No.

[428] Q. I refer you to General Counsel's Exhibit 37 for

identification and ask you to read from the word "Halpern" in the first paragraph to the word "plan."

Mr. Raphael: I object to this method of interrogation. [fol. 441] Trial Examiner: Apparently this witness's memory needs jogging up.

Mr. Raphael: I don't know. Maybe the statement he gave was given under circumstances which might call for investigation of the statement. Who knows which is correct?

A. How far do you want me to go?

Q. I asked you to read from the word "Halpern" down to the word "men."

Mr. Weissman: Mr. Examiner, it is a bit disconcerting to have Mr. Raphael take the affidavit from his hand.

Mr. Raphael: If you are not courteous enough to show me what the witness is reading, I have to do this.

Would you show me what you want him to read?

Mr. Weissman: From the word "Halpern" to the word "men."

Mr. Raphael: You might as well show him the next sentence, too.

By Mr. Weissman:

Q. Did you read the sentence I just showed you?

A. Yes.

Q. Would you now answer the question that I gave you before, which was, did Mr. Halpern say that this contract or pension [429] plan would replace a contract or pension plan which Local 66 was attempting to get for the employees?

Mr. Raphael: I am going to object to your question. You did not ask the witness whether Mr. Halpern said thus and so to him. You asked the witness as follows: Do you recollect Mr. Halpern having said thus and so to you. That was the question that you asked him, because had you asked him the question in the way you are [fol. 442] now asking him and he would have answered you now, you would have been bound by his answer. However, you chose to do this in a circuitous way.

I object to the form of the question. It is not a proper restatement of the previous question.

Trial Examiner: Reframe your question.

Mr. Weissman: Rather than do that, could I have the other question read back?

Trial Examiner: All right.

Mr. Raphael: I will be very happy to have the question read.

(The question was read by the reporter as follows: "Do you recall Mr. Halpern stating that the contract or pension plan would replace a contract or pension plan worked out with Local 66?")

By Mr. Weissman:

Q. Can you answer that question now?

A. I don't remember him saying this, no. I just read on [430] this paper here that it says something to that effect.

Q. Do you have any present recollection of that at this time, of that discussion?

A. No. I don't remember the discussion.

Trial Examiner: After having looked at that affidavit and reading it, doesn't that affidavit do anything to refresh your recollection as to whether that statement was made or not?

The Witness: Well, I remember Mr. Halpern talking about the pension plan, but I don't know if he definitely said that this is something they want to replace some other contract or pension plan.

Trial Examiner: In other words, even after looking at that statement you still don't remember whether or not Mr. Halpern made that statement? Is that what you are saying now?

[fol. 443] The Witness: I don't remember that he actually said this would replace another contract or pension plan.

By Mr. Weissman:

Q. Mr. Thibou, do you recall sending this affidavit, Respondent's Exhibit 38 for identification, to the Board?

A. What Board?

Q. To this office.

A. To the National Labor Relations Board?

Q. That is correct.

A. I don't know. I don't remember.

[431] Q. Do you have any recollection as to whether you wrote this up yourself or whether you wrote this up in front of somebody else? How did you get this? Do you recall?

A. Which one is this? You said you had several.

Q. This is the one that was signed before a Notary Public on July 30th, 1957.

A. If that wasn't signed before Mr. Levy, I assume someone must have asked me to write it, but I don't remember exactly where I mailed it.

Q. At the time that you signed these affidavits with respect to General Counsel's Exhibit 37 for identification and General Counsel's Exhibit 38 for identification, your recollection of the events were fresher; is that accurate?

A. At that time, yes.

Q. In both of these cases you signed the statements in which you stated that the information was true and accurate to the best of your knowledge and belief; is that correct?

A. Yes.

Mr. Weissman: Mr. Examiner, at this time I am going to offer both 37 and 38 in evidence as the witness's past recollection recorded.

Mr. Raphael: I object to both of them as leading, self-serving and incompetent. This witness is not an adversary witness: It is unfortunate if the witness does not answer the questions to the liking of counsel on direct examination, [fol. 444] [432] but I have been confronted with that in my career on many occasions, Mr. Trial Examiner. It is unfortunate, but we can't rehabilitate witnesses by putting in as a substitute statements they made three years ago.

If we could do that, cases could be tried without cross examination. We could just write letters to each other.

Mr. Weissman: The witness has testified that at the time he signed these affidavits his recollection was fresher and that he signed them as being true to the best of his knowledge and belief. I think they are admissible as past recollections recorded.

Mr. Raphael: They are not. They are leading and self-serving.

Trial Examiner: Your objection is overruled and they may be received.

Mr. Raphael: Exception.

(The documents previously marked for identification as General Counsel's Exhibit Nos. 38 and 39 were received in evidence.)

Mr. Weissman: I have no further questions of this witness.

Cross-examination.

By Mr. Raphael:

Q. Mr. Thibou, in 1957 you were on a steering committee with Mr. Raimist?

A. Yes. I was a member of the Steering committee.

[433] Q. What do you mean by a "steering committee"?

A. I think there were about three of us, one man from each department who was supposed to represent this department at the various conferences at the union meetings.

Q. What position did Sid Appel have there?

A. Of the three of us who were on the steering committee, he was head of the steering committee for the men.

[fol. 445] Q. He went to all of the meetings with Mr. Raimist at were held with all different shops, didn't he?

A. Yes; I believe he did.

Q. Did he report back to you from time to time as to what the negotiations were with the various shops, what happened at these different meetings?

Mr. Weissman: Mr. Examiner, I don't know what discussions between Mr. Appel and Mr. Thibou have to do with this case. I would like to know the purpose.

Mr. Raphael: You introduced an affidavit which is chock full of statements between him and Appel. I am going to crossexamine this man and find out what the story is. That is what I am going to do; otherwise, I will just keep quiet and be quiet and take his affidavits and call it a day's work.

Mr. Weissman: I asked no questions with respect to Mr. Appel.

Mr. Raphael: You put in two nice long statements about this man.

[434] Trial Examiner: Those statements are only in connection with the testimony given by the witness on the stand. If there is any hearsay testimony in those affidavits, they will not be relied upon.

Mr. Weissman: Mr. Trial Examiner, I have carefully eliminated any of the hearsay questions from my direct examination.

Mr. Raphael: I will take issue with that statement.

I have a question. There has been an objection and it is supposed to be ruled on.

Trial Examiner: There is nothing pending right now, is there?

Mr. Weissman: I objected to the question.

Trial Examiner: Read the question and the objection, please.

[fol. 446] (Record read.)

Trial Examiner: The objection is sustained.

By Mr. Raphael:

Q. What did the steering committee do? Start with the time you got on to the steering committee. Tell us what you did.

Mr. Weissman: I object. I don't know what the relevancy of this is. I think it is immaterial to the case. It certainly was not taken up in my direct examination.

Mr. Raphael: If you will pull out these two affidavits in the case, I won't even cross examine this man.

[435] Trial Examiner: The objection will be sustained to the last question.

As I indicated, I will use the affidavit only in connection with appraising the witness's prior testimony with reference to the matters that are covered by that affidavit and covered by his testimony.

By Mr. Raphael:

Q. Did Mr. Halpern ever accuse you or any other people of slowing down on the job?

Mr. Weissman: Again I am going to object, because it is outside the direct testimony.

Mr. Raphael: This is part of the man's statement. If we are going to limit ourselves here and just let the Board put in anything they want, I can't prove my case.

Trial Examiner: You can prove it, but I don't think you should cross examine on matters that were not gone into on direct examination.

Mr. Raphael: This man read a statement. He read word after word.

Trial Examiner: I indicated to you the limited purpose that I would look at that affidavit.

[fol. 447] Mr. Raphael: But this is in evidence now. It has been put in evidence.

By Mr. Raphael:

Q. I want you to look at this exhibit which you made. I want you to read and ask you whether you made the following statement: "I am the vice chief in the [436] elevator department."

Do you recall making this statement?

A. Yes, sir.

Q. Do you recall making this statement: "I am also a member of the steering committee of Local 66"?

Mr. Weissman: Mr. Examiner, Mr. Raphael is attempting in every which way to get evidence in that was not brought up on direct examination. I am going to object to it, because if he wants to make the witness his own witness, he can go ahead and do so.

Mr. Raphael: I am just asking my questions, Mr. Examiner.

I don't want to argue with you, Mr. Weissman.

Trial Examiner: It is apparent to me, Mr. Raphael, you are going beyond the scope of the direct examination. The objection will be sustained.

Mr. Raphael: And that you rule I have no right to go over this affidavit and the other affidavit, which the Board has used to great length in actually badgering this man

to answer certain questions? If it is your contention I can't use these two affidavits, I will sit down.

Trial Examiner: That is not the contention and that is not the ruling.

My ruling is you may use it in connection with any matters that were brought out by General Counsel in direct examination.

[437] Mr. Raphael: This affidavit was brought out. This is his affidavit. There are a lot of things here helpful to the employer's case.

[fol. 448] Trial Examiner: You can use it as part of your case, if you wish.

Mr. Raphael: This is part of their case. Without this statement, they have nothing.

Trial Examiner: You may proceed.

By Mr. Raphael:

Q. Prior to your having this meeting that you were asked about in July, was there something that led up to that meeting, that you had some talks with Mr. Halpern in which he complained about the slowdown of the work?

Mr. Weissman: I am going to object again. This business of slowdown is not part of the direct examination.

Trial Examiner: Sustained.

By Mr. Raphael:

Q. How did you vote at this meeting, Mr. Thibou?

A. At this meeting my vote was challenged. My vote wasn't counted in the actual ballot.

Q. Why not?

A. Various men, I think about eight or nine, I am not sure, their votes were challenged; the same men that were challenged in the National Labor Relations Board election.

Q. Challenged by whom? By whom were you challenged in the National Labor Relations Board election?

[438] A. I think we were challenged by the union, Local 66.

Q. And you were on the union's steering committee; is that right?

A. I was on the steering committee, yes.

Q. Is that true, that you were on the steering committee? There seems to be some question here at the table whether you were or weren't?

A. Yes, I was.

Q. Did you attend any special meetings of that steering committee?

Mr. Weissman: Objection for the same reasons as stated before.

[fol. 449] Mr. Raphael: This was brought out on direct examination, that he was on the steering committee.

Trial Examiner: Objection overruled.

By Mr. Raphael:

Q. What did you do on the steering committee?

A. What did I do.

Q. Yes.

A. My purpose there was to represent the men of the elevator department, and we discussed ways and means of reaching an amicable settlement with the company.

Q. Prior to this Saturday that you say that you said in the statement that you spoke to Mr. Halpern, had you ever spoken to Mr. Halpern before, either formally or informally, about [439] what was going on with the negotiations?

A. Yes. Sometimes he asked me what was going on with the negotiations. Since I was on the steering committee, he asked me how things were going.

Q. Did you discuss it with him?

A. Yes. We talked about it.

Q. On this particular Saturday when according to this statement you went into his office, you again discussed certain things with him, didn't you?

A. Yes.

Q. Did you know that for a long time there had been talks around the office about establishing a pension plan for the whole clerical staff of the office, that that had been going on for a couple of years?

A. I heard something about it. Word spread around.

Q. That was before Local 66 came on the scene; isn't that correct?

A. I heard that before 66 came around.

Q. So that when you spoke to Mr. Halpern this particular Saturday and he mentioned the pension plan, that wasn't something new that you hadn't heard of before, was it?

A. I heard about it, but not directly.

Q. You heard around the office that they were talking about it; isn't that correct?

A. Yes.

[fol. 450] [440] Q. So it didn't come as a surprise to you, did it? It wasn't something out of the clear blue sky that you never heard before?

A. No.

Q. You testified at this meeting that it might have been Mr. Jacobson who read the proposals. Am I to infer from that statement that it is possible that somebody else other than Jacobson read those proposals?

A. It might have been, because I don't remember exactly who read them.

Q. You don't remember at all who it was; is that correct?

A. No, I don't remember who it was.

Q. When you were at this meeting, did you speak about those proposals yourself?

A. No, I didn't.

Q. You said nothing?

A. I said nothing.

Q. Did Mr. Raimist ask you to give this affidavit, this one of July 30th, Exhibit No. 39?

A. I don't remember. He might have. I don't remember.

Q. This meeting that was held, as you say, at coffee break on this particular day, do you recall how long before the signing of your name on this piece of paper, Exhibit 38, that that meeting took place?

A. I don't remember how long before.

[441] Q. Would you say it was a few days?

A. It probably was very soon after the meeting that I wrote this up, I think.

Q. As you now sit here, do you have any recollection of whether you did or did not discuss the events of that meeting in July of 1957 with Mr. Raimist, being that you were on the steering committee?

A. I think I did tell him that the men had voted to resign from Local 66.

Q. Did Mr. Raimist ask you to give him a statement about what happened at the meeting? Isn't this how it came about?

A. That might have been how this came about. I don't remember exactly.

Q. You personally didn't prepare this statement, did you?

[fol. 451] Mr. Weissman: Which exhibit are you talking about?

Mr. Raphael: Exhibit 38.

Mr. Weissman: Does the witness know which statement it is?

Trial Examiner: This is the July 30th statement, not the one before Levy.

A. I don't remember just how that was prepared.

Q. I am going to see if I can refresh your recollection.

I think you will come to the same conclusion as I did. If you will notice on the first page originally the name "Murray Kline" was typed "K-l-e-i-n" and it was changed to [442] "K-l-i-n-e."

Does that refresh your recollection that this paper was not in fact typed by you?

A. I know it was not typed by me.

Q. Did you dictate the contents of this statement to any stenographer? By "this statement," I am referring to Exhibit No. 38.

A. You asked me whether or not I dictated?

Q. Whether you dictated it to a stenographer, or anything, or whether this was given to you and you looked at it, or what.

A. I don't remember actually how it came about. I know I went over it and made corrections.

Trial Examiner: Where were you when you made the corrections? Where were the corrections made? I don't mean on the paper; I mean in what office?

The Witness: I think I might have made them at home.

By Mr. Raphael:

Q. You don't know?

A. I don't know.

Q. Do you know a Notary Public by the name of Irving Marinoff?

A. That is what I was trying to recall.

Q. Did you go before any Notary Public and raise your right hand and swear to the truth of the statements on this paper, Exhibit 38?

A. I might have, but I don't remember.

[fol. 452] [443] Q. You don't remember any of the circumstances?

A. No, I don't.

Q. Were you questioned about this case before you came here today by anybody?

A. What do you mean was I questioned about the case?

Q. Did anybody discuss this case with you before you came here today to testify? I didn't discuss this case with you, did I?

A. No.

Q. Did anybody else?

A. Yes.

Q. Who?

A. Mr. Weissman.

Q. Where?

A. I think it was the Friday before the trial started.

Q. You came up here?

A. Yes.

Q. How long were you here? How long did you spend with Mr. Weissman?

A. I think roughly about half-an-hour.

Q. Did Mr. Weissman show you during the course of your discussions Exhibits 37 and 38?

A. I think he did have them in his possession. He showed me some sections of them, yes, and he gave me a copy of one of them. I don't remember which one it was right now.

[444] Q. Did he discuss your testimony with you at that time?

A. He said what type of questions he probably would ask and the general nature of the trial itself.

Q. Were those substantially the questions that were put to you here today?

A. Some of them were, yes.

Q. Were you asked about your recollection as to these various incidents that he asked you about today here?

A. Well, he asked me what happened on such-and-such a date and I said I don't remember, and then he showed me the paper and says, "You testified to this," such-and-such, and now do I remember.

Q. It didn't help you to remember?

A. No. I don't remember all the things that happened at that time.

Q. Did Sid Appel ever make a statement at this meeting, or did he ever tell you what he had drawn up his own form of contract?

[fol. 453] Mr. Weissman: What meeting are you talking about?

Mr. Raphael: July, 1957.

A. I think Sid Appel did say something about this was his contract, or a contract that he was proposing because he thinks it was a better contract than probably the union could get, or something to that effect.

Q. Do you remember you were questioned here as to who told [445] you to come to this meeting? Do you remember you were questioned about that and you said you got it from one person or another person, and so forth?

A. Yes.

Q. I want to see if this doesn't refresh your recollection as to who in fact did tell you to come to this meeting. I am reading now from a typewritten transcription of General Counsel's Exhibit 37. This is what you wrote. I want to read it to you and see whether this in fact doesn't refresh your recollection.

"I attended the meeting during the last week in July at which I and others resigned in writing from Local 66. During the day Sid Appel came around to the various departments, including mine, and told us there would be a meeting in the drafting room at 4:30 p. m. or 5 p. m."

Do you recall that statement?

A. I think I remember he did come around and say that there would be a meeting.

Q. So that in fact he was the author of that meeting, is that right; that is, Mr. Appel?

A. Yes.

Q. And it was through him that you received the appropriate notice to go to this particular meeting?

A. Yes.

Q. Do you recollect these events occurring at the meeting [446] at which Sid Appel stated that he had a sore throat and that Herbie Jacobson would read the contract to the people at the meeting?

A. Now that you bring that up, I think I do remember [fol. 454] something to that effect, that Herbie Jacobson did read it, because Sid Appel had a sore throat at that time.

Q. Do you recollect Sid Appel having made a statement at this meeting in July of 1957 that there were two papers to be signed, one paper resigning from Local 66 and the other paper for something else? Do you recall that?

A. Yes. I believe he asked me the same question.

Q. At the time that you executed this statement, General Counsel's Exhibit 38, the one that is dated July 30th, 1957, were you still a member of the union, Local 66?

A. What was the date?

Q. July 30th, 1957.

A. To the best of my knowledge, it was after, I think we had requested decertification from the union.

Q. You signed that, too?

A. Yes.

Q. You were still in communication, though, with Mr. Raimist after that meeting and when you signed the decertification, weren't you?

A. Yes. I was in contact with him, yes.

Q. At the time that you had this meeting at the end of [447] July, 1957, were there any discussions at that meeting as to how far Local 66 had gotten with Williamsburg Steel in connection with its negotiations for a contract? Was that brought up to the meeting?

A. I think it was brought up at the meeting that negotiations had reached an impasse, and they felt they weren't getting any place with the union at the time. That was one of the reasons for getting this contract together.

Q. Did Sid Appel make that statement?

A. I imagine it was either he or Herbie Jacobson, because I think they did the talking.

Q. In your opinion, from having observed Mr. Appel throughout the time when the negotiations with Local 66 began back in 1956 down to the time shortly before this meeting of July, 1957, is it your opinion that Mr. Appel conducted himself as a militant member of the union, trying to get the best he could for the men?

[fol. 455] Mr. Weissman: I object to that. I think it is not relevant.

Mr. Raphael: I want to show what the real basis of this meeting was, that it wasn't company-inspired, that it was union-inspired by the men themselves.

Trial Examiner: Objection sustained.

By Mr. Raphael:

Q. Did anybody ever tell you how to vote at this meeting?

[448] A. No. They told us to vote as we felt.

Q. What you did at this meeting, was that the result of your own judgment?

A. Yes.

Q. Uncoerced by anybody?

A. That is correct.

Mr. Weissman: Do I understand, Mr. Trial Examiner, that these two exhibits are being received for the limited purpose that you indicated in ruling on my offer of certain testimony?

Trial Examiner: That is correct.

Mr. Raphael: I have no further questions.

Re-direct examination.

By Mr. Weissman:

Q. Do you recall whether you were paid by the company for the time that you spent at the meeting in July of 1957?

Mr. Raphael: I am going to object to that as improper re-direct. As long as we are going to have rules, I think they ought to be for everybody.

Trial Examiner: The objection is overruled. You may answer.

By Mr. Weissman:

Q. Do you recall? Yes or no?

A. Do I recall what?

Q. Whether you were paid for the time you spent at the meeting in July of 1957.

A. To the best of my recollection, at the end of the [fol. 456] day we [449] punched out normally and went home.

Q. You punched out after the meeting on this particular day?

A. We punched out at the normal quitting time, whenever that was, at 5:30 or six o'clock.

Q. Was that overtime, Mr. Thibou?

A. I think at that time eight to five was straight time, or something to that effect. I am not sure.

Q. Whatever time was spent after five was overtime?

A. It was either five or 5:30. I am not sure. I am not sure when the overtime starts.

Q. So its your testimony you punched out and you were paid?

Mr. Raphael: I am going to object to that question. It is a paraphrasing of the witness's testimony.

Mr. Weissman: I will withdraw it.

By Mr. Weissman:

Q. Did Sid Appel work in your department?

A. No. He worked in the detailing department.

Q. Did he come into your department on business during the day? Did he have reason to come into your department?

A. He might come in on union matters.

Q. Did he come there on business?

A. What type of business?

Q. Company business.

A. Yes. It could happen that he could come in and question about some job that was being worked on both

by the detailing [450] department and the elevator department.

Q. You were asked whether it was your own judgment with respect to signing those papers at the July meeting, the decertification and the resignation. Do you recall whether there was an agreement among the employees at this meeting that the majority would rule, that if a majority voted in favor of the new contract or the new [fol. 457] provisions, everybody would sign the papers? Is that your recollection?

A. Yes. The majority would rule.

Q. So that when the vote was twenty to fifteen, everybody signed?

Q. I think practically everybody signed.

Mr. Raphael: Practically everybody?

The Witness: Yes.

By Mr. Weissman:

Q. Mr. Thibou, you testified that at the National Labor Relations Board election in 1956 you think you were challenged by the union. What makes you think so?

A. I said I think so. I remember when we had the elections certain of us, when we went to vote, were challenged, and we had to put our votes in an envelope.

Trial Examiner: The question was in connection with your earlier testimony, that you think you were challenged by the union, and the question now is what makes you think that.

The Witness: I don't know. I don't know whether it was [451] the union or not. I think it was the union.

By Mr. Weissman:

Q. You don't know?

A. I don't remember.

Mr. Weissman: I have no further questions.

Mr. Raphael: Nothing further.

(Witness excused.)

Mr. Weissman: I will call Mr. Langiulli to the stand.

[fol. 458] TOBY LANGIULLI, a witness called by and on behalf of the General Counsel and having been first duly sworn, was examined and testified as follows:

Trial Examiner: What is your name?

The Witness: Toby Langiulli.

Trial Examiner: Please give your address for the record.

The Witness: 326 Balchen Street, Massapequa, Long Island.

Direct examination.

By Mr. Weissman:

Q. Mr. Langiulli, how long have you worked for Williamsburg Steel Products Company?

A. About five or six years.

Q. What department do you work in?

A. The Apartment House Division.

Q. Where is this located physically in the building; what floor?

A. On the fourth floor.

[452] Q. Do you recall Mr. Halpern coming to your department on April 4th, 1957 and announcing a wage——

Mr. Raphael: No, no.

Mr. Examiner, let us have questions and answers.

Trial Examiner: Do you remember him coming to your department on or about that day, April 4th, 1957?

The Witness: No.

By Mr. Weissman:

Q. Do you have any recollection of Mr. Halpern reading new wage schedules from a piece of paper?

Mr. Raphael: I am going to object to that as leading.

Trial Examiner: He may answer yes or no.

A. I don't recall. I couldn't give you that answer.

Q. Do you recall ever making a statement to that effect?

A. No.

[fol. 459] Q. Do you recall signing an affidavit on August 8th, 1957?

A. No, I don't recall.

Mr. Weissman: Please mark this for identification.
Trial Examiner: That will be 39.

(The document above referred to was marked as General Counsel's Exhibit No. 39 for identification.)

By Mr. Weissman:

Q. I show you this statement.

Mr. Weissman: For the record, this purports to be an affidavit of Toby Langiulli, signed August 8, 1957, before a Notary Public, David Rosenberg. There is also a second [453] statement which is also notarized by David Rosenberg, on the same date.

By Mr. Weissman:

Q. I ask you to read the final paragraph on Page 1, starting with the word "On," and read through up to the word "company" on the second page.

(Short pause.)

Did you read it?
A. Yes.
Q. Can you answer the question as to whether Mr. Halpern came around to your department on or about April 4th, 1957 and made an announcement with respect to wages?
A. No, I cannot answer it. I don't remember.
Q. I show you this statement again.

Mr. Raphael: I object to this. This I object to.
The witness was shown the statement. He has answered the question. It did not refresh his recollection.
Trial Examiner: I don't know what he is going to do now.
Mr. Raphael: He is showing him the same thing.
Trial Examiner: I don't know whether he is or isn't.
[fol. 460] Mr. Raphael: Is that your intention?
Mr. Weissman: It is my intention to read that portion and a second portion.
Mr. Raphael: Let us take one thing at a time. Is it your intention to make this witness reread the same thing

the [454] witness has read and then answer your question? You want him to read it again?

Mr. Weissman: That is right.

Mr. Raphael: I object to that as asked and already answered.

Trial Examiner: You say you have no recollection of ever making such a statement?

The Witness: No, I don't remember.

Trial Examiner: Do you recognize that statement that counsel is now showing you?

Mr. Weissman: Look through it.

The Witness: I don't recall it.

By Mr. Weissman:

Q. I call your attention to the first page and ask you whether your initials appear on this correction over here (indicating).

A. There are initials there. It looks like mine.

Q. And also down here on the bottom of the page on the second correction.

A. I can't even make this out.

Q. Can you make out this initial over here (indicating)?

A. It looks like "T.V."

Trial Examiner: Is it in your handwriting?

The Witness: It looks like my handwriting.

By Mr. Weissman:

Q. I refer you to the second page and I ask you whether these are your initials next to that change [455] (indicating).

A. It looks like mine.

Trial Examiner: Is it or is it not your handwriting, those initials?

The Witness: I am not sure. It has been smudged.

By Mr. Weissman:

[fol. 461] Q. Is this your change above that word?

A. I don't know.

Q. Are these your initials over here, where the "S" has been changed?

Mr. Raphael: I can barely read it.

A. I am not sure.

Q. Are these your initials over here, in ink?

Trial Examiner: What page are you referring to now?

Mr. Weissman: Page 4.

A. This looks a little bit like my initials.

Q. And over here, on the same page (indicating), on Page 4?

A. It looks like mine.

Trial Examiner: Can you say whether it is or it isn't?

The Witness: I am not sure. I don't recall doing it. That is the whole thing.

By Mr. Weissman:

Q. You say it looks like yours but you don't know whether it is yours?

Mr. Raphael: He says he isn't sure because he doesn't recall doing it.

Mr. Weissman: I am asking the witness.

Mr. Raphael: I am quoting from the record.

[456] The Witness: It looks like mine, but I don't recall doing it.

By Mr. Weissman:

Q. Going to Page 5, there are three places where changes exist with initials next to them. Are they your initials?

A. Where are all the places?

Q. Place one (indicating), place two (indicating), and place there (indicating).

A. I don't know.

Q. I turn to Page 6 and show you a change on the bottom of the page and ask you whether those are your initials in ink.

A. Again I say I couldn't tell whether it is mine or not.

[fol. 462] Q. I turn to Page 7, the last paragraph, and I ask you whether these two changes are your initials.

Mr. Raphael: I would like to point out for the record, Mr. Examiner, that some of these changes are in pencil

and some are in ink. I ask you to look at it. Where he says they are initials, I can't for the life of me say they are initials.

By Mr. Weissman:

Q. I ask you whether this is your signature on the affidavit.

A. I think it is mine.

Q. You think it is yours, or do you know that it is yours?

A. I think it is mine.

Q. Is it or isn't it?

[457] A. Yes.

Trial Examiner: Then why do you hesitate? Why do you say you think it is? Why did you twice hesitate and say you think it is? I am talking about your signature now.

The Witness: It is the scribbling. I see all the notes on there. Most of it is smudged out.

Trial Examiner: Your signature is smudged out?

The Witness: No. This looks like my signature. The only thing I hesitate is, I don't remember this.

Trial Examiner: I know, but first you said you thought that was your signature and then you said, when you were pressed, that it is your signature. I was wondering why you hesitated at first about acknowledging it to be your signature.

The Witness: Usually if I sign my signature, I would remember it, or remember that it is my signature.

Trial Examiner: You mean you don't remember signing this instrument at all?

The Witness: I don't recall signing it.

Trial Examiner: You don't remember the circumstances under which it was given?

The Witness: No.

[fol. 463] Trial Examiner: Do you know the Notary there? Who is he?

Mr. Weissman: David Rosenberg.

[458] Trial Examiner: Do you know a David Rosenberg?

The Witness: No.

By Mr. Weissman:

Q. Mr. Langiulli, on the latter part of the last page there is a paragraph written in ink and signed. Is this your handwriting? Is this your signature?

Trial Examiner: At the bottom of the page?

Mr. Weissman: That is correct, on the very bottom.

A. Yes.

Q. Is this entire paragraph in your handwriting?

A. Yes, that is my handwriting.

Q. Can you tell us when and under what circumstances you signed this affidavit?

A. I don't recall when I signed it.

Q. Do you recall where you were when you signed it?

A. No, I don't. No.

Mr. Weisssman: Mr. Examiner, at this time I ask that this witness be declared a hostile witness and permit me to cross examine him.

Mr. Raphael: I object to that most strenuously. We have evidence in this case which I don't care to disclose publicly. This man was a key spokesman for the union at all times. For all I know, right up to this time. Because this witness has given Mr. Weissman negative answers, for Mr. Weissman to take the position now of his being a hostile witness does not create the atmosphere of his being hostile.

[459] Trial Examiner: I am at a loss when a witness does not remember a lengthy statement of this kind, part of [fol. 464] which he wrote himself, and his hesitancy in connection with acknowledging his signature, and some of those initials, frankly leave me in doubt as to whether he is hostile or not. I can certainly see that he is not a willing witness at this time.

Mr. Raphael: I wouldn't know that.

Trial Examiner: It is apparent from the interrogation so far.

Mr. Raphael: Can I have a *voir dire* on the question of hostility?

Trial Examiner: I said I don't know whether he is hostile or not.

Mr. Raphael: I want to have a *voir dire* on the question of his being a willing witness.

Mr. Raimist: He may be scared of his job.

Mr. Raphael: He isn't scared at all. Nobody is scared.

Trial Examiner: I will rule on each question as they come up. You make your objections as we go along.

By Mr. Weissman:

Q. Mr. Langiulli, do you recall on March 11th, 1957 that a sick leave plan, a new sick leave plan, was posted by the company?

A. I recall someone mentioning something about sick day [460] pension, but I don't recall what it was all about. It had something to do with the amount of days that we got a year.

Q. Do you recall having a discussion with Mr. Halpern about this sick leave plan?

A. No.

Q. Do you recall making a statement with respect to a discussion with Mr. Halpern about the sick leave plan?

Mr. Raphael: I object to the form of the question, asking a witness do you recall. The question is did you have so-and-so. I noticed throughout our hearings a ground-work question is asked do you recall having done so-and-so. [fol. 465] Then when the witness doesn't recall, he reads him something to refresh his recollection. The question is did he have such a conversation, not does he recall.

Trial Examiner: I think that should be the basic question.

By Mr. Weissman:

Q. Did you have a conversation with Mr. Halpern?

A. I had quite a few of them, but I don't recall them.

Q. A specific conversation with Mr. Halpern about the new sick leave plan which was posted on March 11th, 1957.

A. No, I don't recall.

Q. I show you your affidavit and ask you to read the third paragraph on the first page from the word "on" throughout the entire paragraph. The entire paragraph, from beginning to [461] end.

Mr. Raphael: Is this something the witness already read before?

Mr. Weissman: No.

(Short pause.)

A. I don't recall this particular instance.

Q. Do you have any recollection now, having read this paragraph, of a discussion with Mr. Halpern about the plan?

A. About the what?

Q. About the sick leave plan.

A. All I recall is that Mr. Halpern and myself always was discussing problems in the company. There were a number of things taken up, like sick day leave. As to what was said, I don't recall. I don't recall this particular instance.

Q. Having read this paragraph, do you have any recollection of Mr. Halpern stating how long this plan had been discussed by management before it was posted?

Mr. Raphael: I will object to that as already asked and answered three times.

Trial Examiner: Overruled.

[fol. 466] The Witness: What was the question?

Mr. Weissman: Read the question to the witness.

(Question read.)

A. No.

Mr. Weissman: Mr. Examiner, it is becoming more and more [462] obvious to me that the witness's recollection is failing him in almost every important matter. I renew my request for the right to cross examine the witness.

Mr. Raphael: I am going to object to it as incompetent. A proper foundation hasn't been laid. Let us, Mr. Examiner, draw the distinction between a witness with a bad memory, a poor recollection, and a witness where it is obvious that the man is recalcitrant and unwilling and hostile. If we do not have the latter situation, I will agree we possibly have the former situation.

But the fault may lie with the Board in not having properly prepared their case, brought their witnesses in—not

two years after the case was filed here at the Board, but bring their witnesses in from time to time as they go along and interview them.

When two years later a man doesn't recollect, I can fully understand this witness's position. It doesn't make the witness hostile. He may have a poor recollection, but that is part of the case that he has to meet as a trial lawyer.

Trial Examiner: You ask whatever questions you think you should ask and I will rule on each question as they come along.

By Mr. Weissman:

Q. Did I make any efforts to see you prior to this hearing commencing?

[463] A. I got a phone call from you.

Q. I called you?

A. Yes.

[fol. 467] Q. Where were you when I called you?

A. In Williamsburg. I was working.

Q. Did I call you again at your home?

Mr. Raphael: Can we have the dates when you called?

Mr. Weissman: Within the last three weeks, prior to the hearing starting.

A. Yes, you did call.

Q. Did I ask you to make an appointment to see me?

A. No. I think the discussion went that you wanted to come over the house that night.

Q. What did you tell me?

A. I didn't want to see you at the time.

Q. Did I try to discuss some of the matters over the telephone with you?

A. Yes.

Q. What did you tell me?

A. That I didn't remember what you were discussing.

Q. Do you recall your stating that in view of your new responsibilities you couldn't talk about the case?

A. No.

Q. Do you recall telling me that you had a home and two children?

[464] A. I couldn't tell you that. I only got one.

Q. Did you tell me you now had numerous responsibilities and that you weren't as carefree as you were when you signed the affidavit?

A. No.

Q. You don't recall telling me that?

A. No, I don't.

Q. Do you recall telling me anything like that?

A. All I recall telling you is that I couldn't see you that night.

Q. Do you realize you are under oath at this time?

A. Yes.

Q. Do you have any idea what it means to lie under oath?

Mr. Raphael: I am going to object to that as incompetent and wholly unnecessary.

Trial Examiner: The objection is sustained.

[fol. 468] By Mr. Weissman:

Q. Referring to the question as to whether a wage announcement was made in your department in April of 1957, do you have a recollection about an employee talking to Mr. Halpern just after he made the announcement?

A. I don't recall the announcement.

Q. Do you have a recollection about a conversation between an employee and Mr. Halpern in which the employee asked what would happen if an employee didn't get an automatic increase?

A. I don't recall.

[465] Q. You have no recollection whatsoever of it?

A. I just don't recall that at that point.

Q. Do you recall receiving an increase in April of 1957?

A. I know we got an increase in 1957. I don't recall what date it was.

Q. You don't know whether it was April?

A. No, I don't. It could have been April. I don't know. It could have been April or July or October.

Q. Do you recall at any time in 1957 the company coming out with a wage plan which was announced in your department?

Mr. Raphael: I object to that. The witness has answered a few times here that he didn't have any recollection of such an announcement being made.

Trial Examiner: I think he only talked about April and July. He may answer.

Mr. Raphael: May I also ask that counsel please don't stand right up on top of the witness.

Trial Examiner: Yes.

Mr. Weissman: I will stand over here.

Mr. Raphael: I think you ought to get back a little further.

Mr. Weissman: I don't know of particular rules on how to examine a witness. I am just standing here.

Trial Examiner: Perhaps you ought to move back a little further from the witness.

[fol. 469] [466] Q. Do you know a William Hankf?

A. Yes.

Q. Who is he?

A. He used to work in Williamsburg Steel Products.

Q. Do you recall what happened to him?

A. Either he was released or he quit. I don't recall. I don't recall.

Q. Do you recall approximately what date he was either released or quit?

A. 1957, I think it was.

Q. Does Mr. Hankf being released or quitting refresh your recollection with respect to the wage increase?

A. No. Why should it?

Q. Do you know a Mr. Iabocino?

A. What is his first name?

Q. I don't know his first name, but I will point out his name to you (indicating).

A. Maybe if I knew his first name. I don't recall his last name.

Mr. Weissman: Does anybody know his first name?

Mr. Raimist: A. J. Inbocino?

By Mr. Weissman:

Q. Do you know an A. J. Iabocino?

Mr. Raphael: Is that Abraham J. Iabocino?

A. I don't recall his last name.

Q. How long did you say you worked for the company?

[467] A. I think about five years.

Q. Had it been the policy of the company to make merit increases at specified intervals?

A. What do you mean? Did you say that they give merit increases?

Q. Yes, at specified intervals.

A. Yes, I would say so.

Q. Do you recall whether merit increases were given out in July of 1956?

Mr. Raphael: 1956?

Mr. Weissman: 1956.

A. No. I don't recall.

[fol. 470] Q. Do you recall whether there were any merit increases given out in October of 1956?

A. The only thing I recall is that I usually got a raise. What dates they were, I don't recall.

Q. Do you recall receiving an increase of $7.50 in October of 1956?

A. How much was that?

Q. $7.50.

A. Yes. I think that is it.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

We will recess at this time until 9:30 tomorrow morning.

[467-A] (Whereupon, at 4:10 o'clock P. M., Tuesday, February 3, 1959, an adjournment was taken to Wednesday, February 4, 1959, at 9:30 o'clock A. M., at the same place.)

[fol. 471] [468] Stenographic Transcript of Testimony at Hearing of February 4, 1959

. . . . . .

[469] PROCEEDINGS

Trial Examiner London: The proceeding will be in order.

Mr. Weissman: Mr. Langiulli.

TOBY LANGIULLI resumed as a witness for and on behalf of the General Counsel, and having been previously duly sworn, was examined and testified further as follows:

Direct examination. (Continued)

By Mr. Weissman:

Q. Mr. Langiulli, I show you General Counsel's Exhibit 39 for identification, which bears your signature in two places, and ask you to read it.

A. The whole thing?

Q. The entire thing.

Mr. Raphael: I thought that was done yesterday. My recollection is that the witness was asked to read it yesterday and he did.

Trial Examiner: Did you read it all yesterday?

The Witness: No.

Trial Examiner: Go ahead.

(Witness complies.)

By Mr. Weissman:

Q. Have you read all of it?

A. Yes.

Q. I would like to read a portion of your affidavit to you and I would like you to answer whether it is true, and please [470] confine your answer to yes or no.

"On or about March 11, 1957 the company posted a notice on the employees bulletin board announcing a new sick

[fol. 472] leave plan. On the same day that this notice was posted I spoke to the chief engineer, Ernst Halpern, about this new plan. I asked him how come the company had put this notice up without any discussion with the employees. He replied that he and Mr. Finkel, the office manager and the son-in-law of Mr. Katz, who owns the business, had been discussing this for the last six months and decided that was the best plan."

Mr. Raphael: I will object to the form of the question and I am going to suggest that before a witness can answer a question yes or no read from some piece of paper a proper foundation must be laid and he must be asked, does he remember making a statement like that.

He is asked to say whether he said it. That is the first prerequisite.

Mr. Weissman: Mr. Raphael forgets what occurred yesterday, the fact that this witness has been asked all the foundation questions and the fact that the Examiner has been permitting me leeway with respect to this witness because of the nature of the answers and the type of hostility that the witness has displayed.

Mr. Raphael: There was no hostility and you haven't proved hostility. You have proved a failure to prepare your [471] case, but that is not hostility.

You cannot let a case kick around for two years and bring a man in here at the last minute and say, "Did you say so-and-so".

Trial Examiner: If you want a record here, you will have to confine yourselves to speaking one at a time.

Mr. Raphael: I object.

Trial Examiner: Overruled.

By Mr. Weissman:

[fol. 473] Q. Did you or did you not make this statement at that time?

A. I recall something being put up on the bulletin board. What time was that?

Q. On or about March 11th 1957.

A. I know he put something on the board. I don't recall if it was anything about sick leave. I know I had an argument with him about sick leave. He was forever instituting different policies on sick leave.

Q. You recall you had an argument with him?

A. In the sense that I told him one day it is one thing and another day it's another thing.

Q. Is it your testimony that what I read is true?

Mr. Raphael: I object to the form of the question. The witness didn't say anything of the kind and the paraphrasing of the witness's last answer, counsel obviously knows he is not asking the proper question.

[472] Mr. Weissman: I am asking the witness whether it is true or not true, that is all I want to find out, and Mr. Raphael insists on breaking in.

Mr. Raphael: Yes, because you are not conducting yourself properly. That is not proper.

Trial Examiner: The objection is overruled. He may answer.

By Mr. Weissman:

Q. The statement that I read to you, is it true or is it not true?

A. I don't remember.

Q. You don't remember?

A. No.

Q. I would like to read another portion of this affidavit:

"On or about Thursday, April 4"——

Mr. Raphael: What page are you reading from and where? I want to follow you. Some of this stuff you read yesterday and I will object to a rereading.

Mr. Weissman: I don't want Mr. Raphael peering over my shoulder. It is distracting.

[fol. 474] Mr. Raphael: Give me a copy of what you are reading.

Mr. Weissman: If I have one I will be happy to give it to you.

I don't have a copy.

Mr. Raphael: Then I want to read with you.

Mr. Weissman: I will be happy to read this with the [473] witness, but I do not want Mr. Raphael peering over my shoulder.

Mr. Raphael: Show me what you are reading before you read it.

Trial Examiner: I don't think that is a proper way of proceeding.

Mr. Raphael: I want to be sure that this man is reading what I think he is reading.

Trial Examiner: Let him ask the question in the normal way, and then, if you want, on cross examination you may question. I presume the reporter can mark it here in his notes.

Mr. Raphael: I consider that wholly unfair, especially under the Jencks decision. Where a witness is being confronted with a statement, I have a right to see that statement during the course of the examination.

Trial Examiner: No; after he has testified.

Mr. Raphael: No, sir, that is incorrect.

Trial Examiner: Proceed.

By Mr. Weissman:

Q. Reading from your statement, Page 1:

"On or about Thursday, April 4, 1957, Chief Engineer Halpern went around to the various departments making up the Engineering Department, namely, Elevator, Drafting and Listing, there were about twenty employees including myself in the listing department. He told us to stop working and [474] listen to his announcement of a [fol. 475] new company policy concerning wages. He read to us from a sheet of paper which he held.

"He announced that effectively immediately the company was going to grant an automatic increase of five dollars per week every three months to men who were making up to but not including seventy-five dollars per week. For men making seventy-five dollars and up to but not including ninety dollars per week, company would grant an automatic increase of five dollars each six months. For employees receiving ninety dollars or more per week, the company stated that it would review the individual's case every six months. No automatic increases would be granted. Raises would be granted in the discretion of the company.

"Someone in the group asked, 'What if you don't get an automatic increase?' Halpern replied, 'You will be fired.' "

With respect to this statement, is it true or not true?

Mr. Raphael: I am going to object to this particularly because yesterday—my memory is very vivid—this particular portion was shown to the witness, the witness read it, he was asked about it in particular just what you have read and the witness said he didn't have any recollection. The question has been asked and answered.

Trial Examiner: Objection is overruled.

A. I recall something that he made a statement—I don't recall if it was something new or something that they had said [475] years ago. They talked about pays: I know from my own personal experience I used to get a five-dollar raise every six months.

Q. Do you recall whether this particular statement that I read to you just now is true or not true?

Mr. Raphael: I will object to the form of the question.

Trial Examiner: Overruled.

[fol. 476] A. It is true in a sense. What do you mean?

Q. Did it occur or didn't it occur?

A. It occurred some time that year. I don't recall the date. He talked to us.

Q. Reading from Page 8 of your statement, beginning with the second paragraph:

"Beginning the week of July 15, 1957 rumors had been going around the office about a pension plan. On Monday or Tuesday, July 15th or 16th, Chief Engineer Halpern approached me and asked me, 'Did you hear about the good pension plan the company wants to give you men?' I said, 'Yes, but I don't know the full details of it.' Halpern asked me if I would like to come into his office and look at the plan. I told him I would not care to do so. Halpern then asked me if some of the other men would like to see it and I said I didn't know. He then asked me whether I would object if he showed it to the men and I told him, 'I am not the boss here and I cannot do anything I want to here.' I told him that if [476] he wanted to show it to the men it was up to him to do so. He made the decisions, not I."

Is this true?

Mr. Raphael: I will object to the form of the question. I will object to the whole manner in which the questioning of this witness is being handled. Pieces are being separated from the affidavit. The man was asked to read the whole thing. He is taking little snips here and there. A lot of it contains incompetent prior testimony, such as, "rumors were spreading."

I haven't got a copy of the thing in front of me. I cannot follow the statements he is making to the witness. I don't know whether it is detached from something else which the witness should properly hear and whether we are playing a game.

[fol. 477] Under the circumstances, I think this whole inquiry is improper. It is unfair to the witness and counsel.

Trial Examiner: Objection overruled.

A. I remember that was talk about pensions plans, but practically every time he turned around there was something being talked about, but I don't recall the incident about Ernie Halpern asking me. I know we were usually at each other's throats discussing certain company policies and procedures and new methods. I don't recall that.

Q. With respect to this particular statement, you say you [477] don't recall?

A. No.

Q. Mr. Langiulli, this affidavit was notarized on August 8th, 1957.

At the time that you signed these affidavits, were these events fresher in your mind?

Mr. Raphael: I will object to the form of the question and to its competency.

A. I think so.

Mr. Weissman: I offer General Counsel's 39 for identification in evidence as a past recollection recorded of this witness.

Mr. Raphael: I most strenuously object to it. To begin with, I haven't been shown the statement.

Trial Examiner: Look at it.

Mr. Raphael: I still don't know what it contains. It might be my grandmother's biography.

(Mr. Weissman hands document to Mr. Raphael.)

Mr. Weissman: May the record reflect the fact that General Counsel's Exhibit 39 for identification has been shown to Mr. Raphael and that he is now reading it.

Mr. Raphael: Let us not be facetious. You cannot offer a paper in evidence unless you show it to opposing counsel. [fol. 478] Mr. Weissman: I just want the record to reflect it.

Mr. Raphael: I will object to this for several reasons: [478] (A) It contains, as far as I have read, a considerable amount of hearsay, rumors, gossips and other kinds of evidence which is like chasing a shadow in the dark. Nobody can cross examine anybody about it or refute it.

In the second place, it is self-serving and the witness hasn't recollected it. And the witness has testified under oath that some interlineations or/and markings on this thing he doesn't know about.

There is no evidence of hostility. The only thing that the record shows is a poor memory on the part of this witness, and you certainly cannot take your own witness who has been called not as an adversary and not under any of the rules which indicate hostility and produce an affidavit based on hearsay, a lot of incompetent statements, self-serving declarations, and put it into evidence and use that as a substitute for him.

I object to this and I think it has no weight at all.

Trial Examiner: Overruled. It will be received in evidence.

(The document previously marked for identification as General Counsel's Exhibit No. 39 was received in evidence.)

Mr. Weissman: I have no further questions of this witness.

[479] Cross-examination.

By Mr. Raphael:

Q. Mr. Langiulli, were you a member of Local 66?

A. Yes.

[fol. 479] Q. Were you a member of the steering committee?

A. Yes.

Q. How many people were on this committee? Do you recall that or don't you recall it?

A. Three.

Q. One of them, I think, was Mr. Thibou?

A. Yes.

Q. You, and who was the third man? Do you recall?

A. Sidney Appel.

Q. Were you ever down to the National Labor Relations Board? They used to be at 2 Park Avenue. Were you ever down at 2 Park Avenue?

A. I think I was.

Q. Did they go over this case with you?

A. I don't recall.

Q. Let us say within the past year, has anybody from the National Labor Relations Board ever discussed this case with you?

A. No.

Q. We will say this statement purports to be made on August 8, 1957. How long did you continue to be a member of Local [480] 66; do you recall?

A. Until the boys said I didn't represent them any more.

Q. That was when? Was that about the time of that July, 1957 meeting?

A. It was about in the summer of '57.

Q. You say the boys said you don't represent them. You mean members of this unit here, the technical engineering unit?

A. Yes.

Q. About how many boys spoke to you about that?

Mr. Weissman: I will object to that. It wasn't discussed on direct examination and I don't see the relevancy of the question in any event.

Trial Examiner: Sustained.

By Mr. Raphael:

Q. You were asked about various conversations with Mr. Halpern by different items.

Do you have any recollection of Mr. Halpern ever saying to you that you should break away from the union or you should do anything to get out of Local 66?

A. No, I don't remember.

[fol. 480] Q. You testified in your direct examination to the effect, as I remember, you and he were at each other's throats.

Am I to infer from that that you were always arguing with each other?

A. We had a good time.

[481] Mr. Weissman: I move that that be struck as not responsive.

Trial Examiner: I think it may stand.

By Mr. Raphael:

Q. You had a good time. You mean fighting with each other?

A. Yes.

Q. Did you remain at odds with your respective points of view with him?

A. What do you mean?

Q. You didn't come to any agreement with him or he with you about any particular points, did you?

A. No.

Q. By the way, Mr. Langiulli, did you type this paper up, this General Counsel's 39? You didn't type this up, did you?

A. I don't know how to type.

Mr. Raphael: I would like to state for the record at this time—you see, that is one of the reasons that a man must be given a paper—this is not an affidavit in the State of New York.

I want to call your attention to this: Where it says "State of New York," there is no County. In our State this is not a proper form of affidavit. And the fact that a Notary signed it at the end won't make this an affidavit.

Trial Examiner: That is another matter.

Mr. Raphael: Had I had the benefit of this paper before, [482] I could point these things out.

Trial Examiner: You did have it.

Mr. Raphael: The man was holding it in his hand.

Trial Examiner: I mean when it was offered in evidence you had an opportunity to examine it. I assume that is the time you were talking about.

[fol. 481] Mr. Raphael: No. You have to be given an opportunity to read something. This is not an affidavit, that's for sure.

Trial Examiner: I am not so sure that it isn't.

Mr. Weissman: Mr. Raphael is making statements for his own benefit.

Mr. Raphael: It says, "State of New York," and no county.

Mr. Weissman: The witness testified that he did sign it and there was a Notary stamp on it.

Trial Examiner: Proceed.

By Mr. Raphael:

Q. Do you recall where this paper was signed?

A. No.

Q. Do you recall whether all these papers were attached together in the present form as they are at the time when your signature appeared on the last page here?

A. No, I don't remember.

Q. Were you given a copy at the time, of anything, when [483] you affixed your signature to General Counsel's 39? Did anybody hand you a copy of anything?

A. Not that I know of.

Q. There are a lot of pencilled writings that you have looked at through these sheets here. I believe you testified that they didn't look like your writing. Do you recall that, Mr. Langiulli?

Mr. Weissman: That's not the testimony.

Mr. Raphael: That is what the witness said and I heard him.

Trial Examiner: Whatever the record shows will be accepted as his testimony.

By Mr. Raphael:

Q. Do you recall these pencilled writings?
A. No. Some look like and some don't.

Mr. Raphael: I further object to the introduction of this paper because there are writings in there which the witness doesn't know anything about.

By Mr. Raphael:

[fol. 482] Q. I notice here on Page 4, the beginning of the second paragraph, beginning with the words "Around the same time Finkel also cornered Appel," the word "Finkel" is careted in; is that correct?
A. Yes.
Q. Some other word is crossed out?
A. Yes.
Q. There are no initials that appear here?
[484] A. That's right.
Q. Do you recall whether this change was in here? Did you ever see this before?
A. I don't recall.
Q. I want to see if I can refresh your recollection.
After this meeting of July, 1957, were you in touch with Mr. Raimist?
A. What was the meeting?
Q. I don't know. There was some testimony here about a meeting at Williamsburg. Do you recall that?
A. I don't recall.

Mr. Raphael: I have no further questions.
Trial Examiner: May I see that statement, please?

(Mr. Raphael hands document to the Trial Examiner.)

Mr. Weissman: I have no questions.

By Trial Examiner London:

Q. Do you recall when the last time was that you saw this statement prior to yesterday?
A. No, I don't remember.
Q. You don't have any recollection of signing it; I mean as to the time or place?
A. No.

Q. Do you recall signing any affidavits within the last year or year and-a-half for any purpose?

A. I remember signing an affidavit, but I don't recall if it was a year or two years ago or three years ago.

[485] Q. Signing what affidavit?

A. Some statement I had made.

Q. About this matter?

A. About this whole matter, yes.

[fol. 483] Q. But you don't recall where that was?

A. No. It might have been at the company; I don't recall.

Q. Do you remember who else was present at the time that statement was made?

A. No, I dont remember.

Q You said you were down at the Board offices at 2 Park Avenue?

A. Yes.

Q. Do you recall about when that was?

A. It might have been two years ago.

Q. When you say it might have been, your best estimate now is that it was about two years ago?

A. Yes, two years ago.

Q. Do you remember who you talked to then?

A. I think it was the time when we had—I think Mr. Finkel was there and Mr. Raimist. I don't recall. It was a big room and we were sitting there talking about something. I don't recall what it was.

Q. You say Mr. Finkel was there at the same time?

A. Yes.

Q. Did you make a statement, a written statement at that [486] time?

A. I recalled him asking me questions. I don't recall if I signed anything.

Q. Was it a hearing, something like this?

A. I think it was.

Q. Or was it a private conference in an office? Was there a presiding officer, like I am presiding here?

A. I wasn't sworn in so I don't think it was a regular hearing. I think it might have been a conference.

Q. But you have no recollection of the time or place when you signed this?

A. All I can say is that I think I might have signed that in Williamsburg.

Q. At the plant?
A. Yes. But I don't recall actually when I signed that.

Trial Examiner: That's all I have.
Anything further?
Mr. Weissman: No.
[fol. 484] Trial Examiner: That's all. Thank you.

(Witness excused.)

Mr. Weissman: May we have a one-minute recess?
Trail Examiner: Yes.

(Short recess taken.)

Trial Examiner: The proceeding will be in order.
Mr. Raphael: I would like to make a statement for the
[487] record. I think you should make it, Mr. Weissman.
There was a witness, Manzuk, under subpoena and he was let go, he was released from the subpoena, and I think the record should reflect it.
Mr. Weissman: If I don't call him, I don't call him.
Mr. Raphael: I just wanted the record to show it.

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[512] Q. But you don't have a record of that?
A. No, sir.

Mr. Raphael: I have no further questions.
Mr. Weissman: No questions.
[513] Trial Examiner: That's all.

(Witness excused.)

Trial Examiner: Do you still have that one other witness that you want to call?
Mr. Weissman: That is correct.
Trial Examiner: You say you expect him here when?
Mr. Weissman: He should be here at one o'clock, Mr. Examiner.
[fol. 485] Mr. Raphael: Supposing we come back here at two o'clock.
Mr. Weissman: Are you certain that the other one is not going to go on?
Trial Examiner: Yes. I understand it is going to be a default.

Do you want to start?

Mr. Raphael: It would be pointless.

Trial Examiner: We will recess until two o'clock.

(Whereupon, at twelve o'clock noon, a recess was taken to 2:00 o'clock P.M. of the same day.)

[514] After recess.

(Whereupon, at 2:00 o'clock P.M., the hearing was resumed, pursuant to the taking of the recess at twelve o'clock noon.)

Trial Examiner London: The proceeding will be in order.

Wesner Vaval called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

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[518] Mr. Weissman: I have no further questions of this witness.

Cross-examination.

By Mr. Newmark:

Q. Mr. Vaval, will you tell the Examiner the circumstances under which you terminated your employment with the company, June, 1958?

[fol. 486] [519] A. One month before Mr. Sid Rosen called me to his private office. He told me that he had a record from Sid Manzuk that I was a little too slow. I answered him that Mr. Manzuk didn't do that the fair way, because myself, I didn't make too much overtime. I didn't make overtime, I would say. So if somebody make overtime he looks like working more than me, because Mr. Manzuk didn't do it in proportion.

Am I understood?

Q. Continue.

A. He told me it was nothing, that "I just want you to improve your work."

One month later—I am not too sure—but a little later he called me back to his private office again and he showed me the record again, the same record, and he told me that he had to let me go because business was bad, that I had the slowest time of work. In other words, I was the slowest. So I had to go.

I told him at this time, "You didn't give me an advice. After you told me that I was a little too slow I kept my own record." And I showed that record to Mike McCarty who told me it was a good idea. But when he had to fire me he didn't ask me how I was. You are supposed to ask somebody how he is, right, sir?

Trial Examiner: Go ahead with your testimony.

A. (Continuing) That's the way I got fired, after two years [520] and one month.

Q. Who fired you?

A. Sid Rosen.

Q. Before you testified in this Courtroom, did you have a talk with Mr. Weissman?

A. Yes, sir.

Q. Did you talk with anybody else of the National Labor Relations Board about this case?

A. When I first got fired I went to Joe Raimist and he told me that I should come to the National Labor Relations Board.

Q. This was in June of 1958?

A. I would say in July, the first or second of July.

Q. What made you go to Joe Raimist in July of 1958?

A. When I got fired.

[fol. 487] Q. Were you a member of Local 66?

A. Yes, sir.

Q. When that vote was taken, July, 1957 meeting, do you recall that a vote was taken?

A. Yes, sir.

Q. Did you vote for or against Local 66?

A. For Local 66.

Q. You did?

A. Yes, sir.

Q. Did you sign any papers with respect to resignation at [521] that time?

A. I signed it because we had agreed before to stick

with the majority. But I never paid any dues. I said if I couldn't be with Local 66 I would be with nobody.

Q. So you did resign from Local 66 with everybody else?

A. I am not sure because a few days later Sid Appel sent me a letter to sign. There was four names in this letter: Toby Langiulli, Jimmy Johnstone, Freddie D. and I. Because this letter they were supposed to send to the Labor Board, they were supposed to say that it was the four men who had not agreed to sign.

Q. You signed a paper resigning; is that right?

A. This——

Q. Just answer yes or no.

A. Yes, sir.

Q. You signed it?

A. I signed a paper.

Q. Now, in July of 1958 when you were fired, you then went to see Mr. Raimist; right?

A. Yes, sir.

Q. But you were not a member of the union any more; is that right?

A. I considered myself with the union.

Q. You considered yourself a friend of Mr. Raimist?

A. No.

[522] Q. You went to him for advice because you were fired; is that right?

A. Before——

Q. Just answer the question. Did you go to him for advice after you were fired?

A. Yes, what I should do. I went for advice for what I should do.

Q. What did Mr. Raimist tell you to do?

A. He told me to come here to the National Labor Relations Board.

Q. To do what?

A. To give a statement of what happened to me.

[fol. 488] Q. Who did you see here?

A. Mr.—I don't recall his name.

Q. Did you make a statement?

A. No, sir.

Q. What happened?

A. When I came to him he told me that he didn't know exactly what Mr. Raimist wanted. If he wanted me—if he

wanted my case to be his case or if he wanted me to just make a complaint against the company for myself.

Q. What did you tell him?

A. I told him I didn't know.

Q. Did Mr. Raimist come up here with you?

A. No, sir.

[523] Q. Did he call up the Board for you before you came up?

A. I don't know, sir.

Q. But you made no statement here?

A. Yes, sir.

Q. You recall while you were still employed by the company that the National Labor Relations Board man was making statements of various people before you were fired? Do you recall that time? Mr. Levy, do you recall him coming to see people and make statements?

A. No.

Q. Did you ever make a statement while you were employed by Williamsburg Steel for the Board?

A. No, sir.

Trial Examiner: You mean statements in writing?

Mr. Newmark: Yes.

I will ask the Board to produce, if there is in existence, any statement of this witness pertaining to this case.

Mr. Weissman: There is no statement.

Mr. Raphael: Was this man ever interviewed?

By Mr. Newmark:

Q. Who told you about this case that was before the Board?

A. I went to Local 66.

Q. Was this after your first visit here to the Board?

A. I would say a few months after.

[fol. 489] Q. Why did you go there again?

[524] —. Because I wanted to know if there was a job available at the company. I would go there to Miss Roman to see if there is a job.

Q. What did she tell you about this case?

A. She told me that the case was going pretty soon to have a hearing.

When I went to work where I was working, I went to the shop steward——

Q. When was this?

A. Last Monday. I went to the shop steward. I was telling him that I heard that this thing was going to have a hearing, that if at the time the union would like me to be a witness for them I would be glad to testify.

Q. Who did you tell this to?

A. The shop steward of the union where I am working.

Q. In your present place?

A. Yes.

Q. What is the name of the place you are working at?

A. Triangle.

Q. What is the full name?

A. Triangle Steel Products.

Q. Where are they located?

A. I can't tell you exactly. I can go there right away because I know where to take the train and get off, but I don't know the name because I don't speak English too much.

[525] Q. Is it Russell Street, in Brooklyn?

A. I know one thing, that I get off at Nassau Station. I am only there three days, sir. I know how to get there but I can't remember the street. I know it by routine.

Mr. Raphael: I would like to ask a few questions.

By Mr. Raphael:

Q. Mr. Vaval, how old are you?

A. Thirty-eight.

Q. Would you mind sitting back in your chair, please?

A. Thirty-eight.

Mr. Weissman: Mr. Examiner, I don't think that that was necessary.

[fol. 490] Trial Examiner: Proceed.

Mr. Raphael: Let him behave himself as a witness.

Trial Examiner: He hasn't been misbehaving.

Mr. Raphael: This leaning over is not right.

By Mr. Raphael:

Q. After you left Williamsburg, who did you go with? Where did you go to work after you were fired at Williamsburg?

A. No place else.

Q. How long were you out of work?

A. Seven months.

Q. You were very resentful of the fact that you were fired from Williamsburg; is that correct?

A. Sure, sir.

Q. You felt bad about it?

[526] A. Yes.

Q. You felt sore about it?

A. Yes.

Q. Who were you sore against? Williamsburg, weren't you?

A. That's right.

Q. After the seven months, while you were out of work, did you do any work at all for anybody or were you just collecting unemployment insurance?

A. Collecting unemployment.

Q. Were you doing a couple of odd jobs on the side?

A. No, sir.

Q. Did you go to Mr. Raimist during that seven-month period that you were out of work?

A. No, sir.

Q. Not at all?

A. Not to Mr. Raimi .

Q. Who did you see? Miss Roman?

A. Yes.

Q. How often did you see Miss Roman?

A. About four or five times.

Q. Where did you see her?

A. At the union office.

Q. Where is it located?

A. That's the Claridge Hotel.

Q. Where is that at? Brooklyn, Manhattan, Queens?

[527] A. In Manhattan.

Q. What is the address? What street is it on?

A. I am not quite sure. I go by routine. I get off at 42d Street and I walk up and I am watching for the Claridge Hotel.

Q. You know if is the Hotel Claridge; is that right?

A. That's right.

[fol. 491] Q. You say you saw Miss Roman three or four times during that period when you were out of work?

A. Yes, sir.

Q. When you went up to see Miss Roman, did you ever meet Mr. Raimist in the office?

A. No, sir.

Q. Never?

A. Never.

Q. Did you ever ask to see Mr. Raimist?

A. When I first got fired.

Q. When you first got fired, did you ask to see Mr. Raimist?

A. Yes, sir.

Q. Did you see him?

A. Yes, sir.

Q. Did you talk to him?

A. Yes, sir.

Q. Tell us what you told him at the time you were fired when you went up to see him.

[528] A. I explained to him my position at Williamsburg——

Q. Please tell us now as you sit here on the witness stand—you went up to see Mr. Raimist when you were fired; is that right?

A. Yes, sir.

Q. That was in June, 1958?

A. Yes, sir.

Q. When you were fired, on the same day you were fired, did you go over to see Mr. Raimist?

A. Not the same day.

Q. How long after?

A. Two or three days after.

Q. Did you call Mr. Raimist? Did you tell him you were coming up to see him?

A. Yes, sir.

Q. Where did you call him?

A. At the union local.

Q. Did you have the telephone number?

A. Yes, on my union card.

Q. You had it on your union card and you had this card in your pocket?

A. Yes.

Q. Were you paying union dues all this time?

A. No, sir.

Q. When did you stop paying union dues?

[529] A. At the time there was nobody to pick up the money.

Q. What money?

[fol. 492] Mr. Weissman: Mr. Examiner, may I ask that the witness be given an opportunity to answer one question before the next question is thrown at him, particularly in view of his language difficulty?

Mr. Raphael: He has no language difficulties.

Trial Examiner: Proceed.

Mr. Raphael: Read the last question.

(Question read.)

A. The dues.

Q. When was that?

A. When they got rid of the union.

Q. You didn't pay any dues after that, did you?

A. No, sir.

Q. Did you ever mail your dues in or bring it up to the union?

A. No, sir.

Q. Between that time when you stopped paying your dues and the time when you saw Mr. Raimist some time in June of 1958, in between that period was about a year; is that right?

A. It could be.

Q. Did you see Mr. Raimist in that period of time, that one-year period of time?

A. Except when I first lose the job.

[530] Q. Forget about it for the minute. Up to that time, did you see Mr. Raimist?

A. No, sir.

Q. Did you talk to Mr. Raimist in that period of time?

A. No, sir.

Q. Did you talk to Miss Roman in that period of time?

A. Yes, sir.

Q. How many times did you talk to her in that one-year period?

A. About four or five times.

Q. What did you talk to her about?

A. About what place could I have a job available to me.

Q. In other words, you wanted to leave during that pe-

riod of time; is that right? Do you understand my question?

[fol. 493] Trial Examiner: Just a moment. Frankly, I didn't understand you either, Mr. Raphael. Your last question, I couldn't understand what it was.

By Mr. Raphael:

Q. Let us start all over again. You are not going to wear me out.

In July of 1957 you stopped paying dues? You had a meeting in July, 1957?

A. Yes.

Q. Were you at that meeting?

A. Yes, sir.

Q. Throughout the whole meeting, were you there?

[531] A. Yes, sir.

Q. How did you know where there was going to be a meeting? Who told you?

A. I don't recall.

Q. Can you recall how many people were at that meeting?

A. I just told you a few minutes ago. I don't recall exactly, about twenty-five or thirty.

Q. Do you think it might be twenty?

A. Maybe much more than that; I don't know exactly.

Q. It might be more or it might be less; is that right?

A. More more than less.

Q. It might be twenty-five?

A. Yes; or thirty, but I don't think less.

Q. But twenty-five you are sure of?

A. I am not sure. I said I don't know. I am trying to give an approximation.

Q. At what time did the meeting start?

A. It started about four o'clock.

Q. Were you at the meeting this whole time?

A. Yes, sir.

Q. Was Mr. Appel there?

A. Yes, sir.

Q. Give me the names of all of the people you remember that were present at that meeting.

A. I will try. Eddie Wisniewski, Ed Strzelechi—I don't

[532] know how to spell these—Al Furst, Herb Jacobson, Pete Mansuk, Mike McCarty, Bulruss—I forget his first name—Phil Colier, Phil Peshkin, Nat Calculli, Larry McCain—I don't quite recall now.

[fol. 494] Q. That's all you can remember?

A. There is a few that maybe I call recall the names.

Q. You have given me eleven names. See how many more you can give me. I am testing your recollection.

A. All right. There is Tom Snee, there was Willie Singer, there was Oscar Goodwin. That's all I can recall now.

Q. You can't recall any other names; is that right?

A. Yes, sir.

Q. You voted at this meeting?

A. If I voted?

Q. Yes.

A. Yes, sir.

Q. Did you make any statements at this meeting?

A. (No response.)

Q. Do you understand what making a statement means? Did you say anything at this meeting?

A. I was trying, but they didn't give me time.

Q. You didn't say anything?

A. I was trying but they didn't give me time to do that.

Q. Did you say anything at all?

A. I didn't, sir.

[533] Q. You testified that you were not one of those that voted against the union; you didn't vote against the union, you said?

A. No, I didn't.

Q. You were for Local 66?

A. For Local 66.

Q. After this meeting, did you talk to Mr. Raimist?

A. No, sir.

Q. When for the first time after this meeting in July, 1957 did you next talk to Mr. Raimist?

A. Right after I got fired.

Q. That would be in June, 1958; is that right?

A. Exactly.

Q. Eleven months later; is that correct?

A. Yes, sir.

Q. Were you working for Williamsburg in September of 1957?

A. Yes.

Q. Were you in every day? Were you working every day or were you out sick or away on a vacation?

A. I can't remember that.

[fol. 495] Mr. Weissman: Mr. Examiner, I submit you cannot answer a question like that. There are about seven parts to it.

By Mr. Raphael:

Q. Did you see some people giving statements to somebody from the National Labor Relations Board while you were up at Williamsburg?

[534] A. I don't recall.

Q. People were being interviewed and they were giving statements?

A. No. I don't recall that.

Q. Did you know that Mr. Wisniewski gave a statement to somebody from the National Labor Relations Board; a Mr. Levy came up there to take a statement?

A. No.

Q. Do you know a Mr. Toby Langiulli?

A. I don't recall that.

Q. Do you know a Toby Lang?

A. Yes, I know him.

Q. Toby Lang is the same man as Langiulli?

A. I know him.

Q. Was he a member of the steering committee of the union?

A. Yes.

Q. You were in contact with him all the time?

A. I am working in the same place.

Q. Did you know that Toby Lang or Langiulli gave a statement or somebody interviewed him from the National Labor Relations Board?

A. I don't recall.

Q. Did you know that many people up in Williamsburg Steel gave statements to people in the National Labor Relations Board? Did you know about it?

[535] A. No.

Q. It never came to your attention?

A. No, I don't recall.

Q. Did you ever see a Mr. Levy up at the Labor Board here? Did you ever meet him?

A. No, sir.

Q. You testified to some talk that you had with Mr. Halpern. When did you have this talk with Mr. Halpern?

A. It was exactly the morning of the day when we get [fol. 496] that meeting to vote for or against the union. In the afternoon we got this meeting and in the morning he called me.

Q. Did you, after you had this talk with Mr. Halpern that you told us about, speak to Mr. Raimist?

A. No, sir.

Q. After you say that you had this talk with Mr. Halpern on that particular morning, did you speak to any fellow employee in Williamsburg Steel?

A. Yes, sir.

Q. On that day?

A. Yes, sir.

Q. Did you tell anybody, any fellow employee, about this talk that you had with Mr. Halpern?

A. I almost made it public.

Q. Did you tell anybody that you had this talk with Mr. Halpern?

[536] A. Approximately——

Q. Did you tell anybody?

A. Toby Langiulli.

Q. You told it to Toby?

A. No—I beg your pardon; it was not Toby.

Q. Before when I mentioned the name "Langiulli" to you, that didn't register. Now you know the name.

Mr. Weissman: I don't think that these remarks are necessary.

Trial Examiner: Proceed.

By Mr. Raphael:

Q. You say it wasn't Toby?

A. I don't think so.

Q. Tell us who it was. I would like to identify that person.

A. I made it public.

Q. Tell us the person that you made the statement to.

Trial Examiner: Name the persons to whom you talked about this.

The Witness: All the persons?

Trial Examiner: Can you name any of them?

The Witness: Mike McCarty knew it.

By Mr. Raphael:

Q. Did you tell it to him?

A. Yes.

Q. What did you tell Mike McCarty and when did you tell it to him?

[537] A. Maybe late in the afternoon.

[fol. 497] Q. Of what day?

A. The same day.

Q. What did you tell Mike McCarty?

A. I told him exactly what Ernie Halpern just told me.

Q. Tell us what you said to Mike McCarty.

A. That Halpern has called me to offer me a five-dollar raise and in two months another five dollars if I have accepted to vote against the union.

Q. Who else did you tell it to?

A. Calculli. This was in the same morning that I told him.

Q. Who else did you tell it to?

A. I think those were the persons that I talked to the first day.

Q. Those are the two people that you told it to?

A. It could be more.

Q. I want the names. Give me the names of all the other people that you told it to.

A. If it is for the same day, that is the two only.

Q. Then tell us what other days you told it to anybody.

A. Then things went on like that and people heard about it——

Q. No. Who else after this day besides those two did you tell this statement to?

A. To anybody.

Q. Give me the names.

[538] A. In the listing department.

Q. Give me the names.

A. Phil Colier, Phil Peshkin, Larry McCain, Toby Lan-

giulli, Freddie D., Freddie Areizaga, Charlie O'Regan, Jimmy Johnstone.

Q. To all these people you made this statement when, the following day?

A. I didn't say so.

Q. When did you make it?

A. I said—I mean I could have told that to another one the day after, that I don't recall, but I know all of them knew.

Q. Who did you tell it to and when?

A. I can't know exactly when. It is impossible for me to remember.

Q. Were you pretty friendly with Mr. Raimist at that time?

A. No, sir.

[fol. 498] Q. Did you call the union between the date of that meeting and the date you got fired. Did you ever call Local 66?

A. No, sir.

Q. You never called Mr. Raimist?

A. No, sir.

Q. Did you ever make any writing; did you write down anything that anybody ever told you or is this all from your mind that you are telling us now? Is this all things you [539] remember, this is in your head?

A. That is in my head.

Q. Do you remember what time the meeting ended that day in July, 1957?

A. I would say about six o'clock or quarter after six, or something like that.

Q. Some people in this case testified it was five o'clock. Is that correct?

A. I don't think it is correct.

Q. Some people testified that it was 5:30; is that correct?

A. I would say between 5:30 and six o'clock. I say approximately two hours this meeting last.

Q. If it is 5:30 it couldn't be two hours. It was an hour and-a-half; is that right?

A. I say approximately. It could be one and-a-half or maybe two hours.

Q. Did you tell anybody at this meeting that you were

present at in July, 1957 that on the morning of that day of that meeting that Mr. Halpern had tried to bribe you?

A. Yes, sir.

Q. You made that statement at the meeting in front of everybody?

A. No.

Q. You didn't make that statement there, did you?

A. At the meeting, no.

[540] Q. You say that after you were fired you did come up to the office of the union, is that right, to Mr. Raimist?

A. Yes, sir.

Q. When you came up to Mr. Raimist at that time, after you were fired—this was in June, 1958—tell us what you said to Mr. Raimist and what he said to you.

A. I told Mr. Raimist how I was fired, why I was fired, and he told me I should go to the National Labor Relations Board.

[fol. 499] Q. What did you tell him about how you were fired? Give us the conversation.

A. After two years and one month in the company somebody—the manager called you and told you that you are too slow, you are fired.

Q. That's what you told Mr. Raimist?

A. Yes, sir.

Q. Then did Mr. Raimist tell you to go to the National Labor Relations Board?

A. I explained to him why also they were acting like that, too.

Q. What else did you tell him? Is this the whole conversation you had with Mr. Raimist? I want everything you said and he said.

A. I explained to him that I didn't want to sign a letter —there were four names in that letter; Jimmy Johnstone, [541] Freddie D., Toby Langiulli and I.

Q. What letter?

A. A letter that the association was supposed to send to the National Labor Relations Board saying that at this time the four workers or the four persons who didn't sign yet are going to sign, which bring the number of persons against the union. At this time I refused to sign it.

Who brought it to me? It was Sid Appel. When he took it back again he brought it to me again and I refused to sign it.

Q. You mean Sid Appel?

A. Yes.

Then Charlie O'Regan. When I was talking to O'Regan and I was mad, and I said I wouldn't sign it, I would rather be fired. Then I saw Halpern—the youngest boss's son—Katz, he was looking at me. I refused to sign. I said, "Fire me but I won't sign it."

I explained that to Mr. Raimist. I explained how suddenly I wasn't a good worker any more. I have had a raise any time there was a raise.

Q. You never got the raise?

Trial Examiner: No. He said he had a raise.

[fol. 500] A. Then, how come after two years and one month I could just get slow? I explained that to Joe Raimist and he told me, "You should go to the National Labor Relations Board," and [542] that I did.

Q. Did he go with you?

A. No, sir.

Q. Did he tell you who to go to see?

A. He told me Mr. Brisson, or something like that. I don't remember the name.

Q. Brissman?

A. Brissman, that's right.

Q. Where did you go to see Mr. Brissman?

A. (No response.)

Q. In this building here?

A. I think so. Let me think one second.

Q. We will give you two seconds.

A. I think so, yes.

Q. This was in June in 1958, after you were fired?

A. I would say July.

Q. When you saw Mr. Brissman, was Mr. Raimist there or just you and Mr. Brissman?

A. Him and I.

Q. Did Mr. Brissman take a statement from you?

A. I don't recall.

Q. Was he writing while you were talking to him?

A. I don't recall.

Q. You don't recall that?

A. No. sir.

[543] Q. Please take your hand away from your mouth so that I can hear you.

You do recall what happened at the meeting of July, 1957, don't you?

A. It was important to me.

Q. You remember what happened at the meeting of July, 1957?

A. Yes, sir.

Q. You don't recollect what happened in June or July of 1958 when you went to see Mr. Brissman; is that correct?

A. I didn't state so.

Q. Tell us what you recollect.

A. I am telling you what I remember. Would you like me to lie?

Q. I will ask you to test your recollection: Were you talking to Mr. Brissman?

A. Yes, sir.

[fol. 501] Q. How long did you remain with him?

A. I would say fifteen minutes, maybe less than that.

Q. Less than fifteen minutes?

A. Maybe.

Q. Was Mr. Brissman writing anything while you were talking to him?

A. I don't remember, sir.

Q. Did Mr. Brissman give you something to sign?

A. No, sir.

[544] Q. That you are sure of?

A. I am sure.

Q. Did you see Mr. Brissman again after that day?

A. Today, yes.

Q. No. You saw him in July, 1958; is that right?

A. That's right. No. I never saw him after that, except today.

Q. Did you see Mr. Weissman before today?

A. No, sir.

Q. Did you see Mr. Raimist after you saw Mr. Brissman up at the Labor Board?

A. Did I see Mr. Raimist after—will you repeat it?

Mr. Raphael: The stenographer will read the question.

(Question read.)

Mr. Weissman: Mr. Examiner, the question is misleading.

A. No, sir.

Trial Examiner: He has answered it.

By Mr. Raphael:

Q. Did you talk to Mr. Raimist after you saw Mr. Brissman?

A. No, sir.

Q. Did you talk to Miss Roman after you saw Mr. Brissman?

A. No, sir.

Mr. Weissman: Mr. Examiner——

Mr. Raphael: Please, this is cross examination.

Mr. Weissman: I would like to have some dates.

[545] Mr. Raphael: After he saw Mr. Brissman. He said he saw him once.

[fol. 502] Trial Examiner: He says he talked to Miss Roman.

Mr. Raphael: He says he didn't, he did not.

Trial Examiner: All right.

Mr. Weissman: Mr. Examiner——

Mr. Raphael: Don't suggest anything to this witness.

Trial Examiner: Let the General Counsel make his statement.

Mr. Weissman: It is my opinion that the witness has been confused with respect to time.

Trial Examiner: Just a moment. You may find out on re-direct examination.

By Mr. Raphael:

Q. When you went to see Mr. Raimist at the time you were fired, you were pretty sore, weren't you, about the fact that you were fired? You testified to that?

A. Yes, sir.

Q. Did you tell Mr. Raimist about this conversation that you had with Mr. Halpern that you told us about today?

A. Yes, sir.

Q. Did he ask you to sign a statement at that time?

A. Mr. Raimist?

Q. Yes.

A. No. I don't recall that; I don't think so.

Q. When you went to see Mr. Brissman, did Mr. Brissman ask [546] you or did you tell him about the fact that Mr. Halpern had offered you this proposition on the day of the meeting?

(Question read.)

A. I don't think I had the time for that.

Q. Did you tell him?

A. I don't think so.

Q. You had enough time; you were out of work for seven months, weren't you?

Mr. Weissman: Mr. Examiner.

Trial Examiner: All right.

By Mr. Raphael:

[fol. 503] Q. Who got you this job in Triangle Steel? Mr. Ramist?

A. Myself.

Q. Who recommended you to the job?

A. Nobody recommended me. They told me they were hiring people there.

Q. Who told you?

A. Miss Roman.

Q. And Miss Roman is the secretary of Mr. Raimist in Local 66?

A. Yes, sir.

Q. And Triangle Steel Products Corporation is under a union agreement with Local 66, aren't they?

A. Yes, sir.

Q. Did you rejoin the union?

[547] A. Not yet. I am three days on the job.

Q. You know that you will have to rejoin the union?

A. Yes, sir.

Q. Who told you that?

A. I was fired because I did want to join the union.

Q. Who told you that you had to rejoin the union?

A. Nobody.

Q. How do you know you have to rejoin the union?

A. That's why I got fired for. I wanted to stick with the union, so this is my personal conviction.

Let me tell you something: When Miss Roman wanted

to send me to a job she told me that maybe another place was hiring people. I said, "Is it union?"

She said, "No."

I said, "I don't care."

Q. She wanted to send you to a non-union place?

A. Not send me. She just give me an address. But it was a non-union place and I refused, I didn't go.

Q. Did you tell Miss Roman at the time about your conversation that you had with Mr. Halpern?

A. Yes.

Q. When did you tell it to her?

A. Before I see Mr. Raimist.

Q. When was this?

[fol. 504] Mr. Raphael: Mr. Levy, would you come in here, please?

By Mr. Raphael:

[548] Q. Did you ever see this man before (indicating Mr. Levy)?

A. No

Q. You don't know him at all?

A. No, sir.

Mr. Raphael: Thank you very much, Mr. Levy. Would you read the question?

(Question read.)

A. It was right after I got fired.

Q. Well, I asked you a question before, Mr. Vaval, as to whether or not you saw Miss Roman after you were fired, whether you spoke to her, and you said you didn't. Do you want to change your testimony?

A. I said I didn't?

Q. That's right.

A. I didn't talk to who?

Q. Miss Roman.

Mr. Weissman: That was whether he spoke to her after he had been up at the National Labor Relations Board, not after he was fired.

Trial Examiner: Frankly, there was some confusion in my mind as to what time you were talking about.

By Mr. Raphael:

Q. You had a conversation with her and you told her the story about Halpern?

A. Yes, because she gave me an appointment when to see Mr. [549] Raimist.

Q. Did she write down anything that you told her? This story, did she write it down?

A. I don't think so.

Q. And Mr. Raimist never asked you to sign a statement or to give anybody a statement about what you said, about the talk with Halpern?

A. I don't think so.

Q. You testified that Miss Roman kept you posted, advised you that this case was pending in the National Labor [fol. 505] Relations Board; is that right?

A. Yes. She told me that this case was coming soon.

Q. When did she tell you this? When was the first time she told it to you?

A. Was it last week? If it isn't last week, it might be Friday or Thursday of the week before last week.

Q. That was about the time when you got the job in Triangle Steel; is that right?

A. No, sir. I got the job this Monday.

Q. When did she tell you about the job in Triangle; a couple of weeks ago?

A. No. I think that's last week.

Q. That's about the time she told you that this case is coming up, wasn't it?

A. No, I don't think so.

[550] Q. Which came first?

A. I think when she tell me that the case was coming was first.

Q. How long before she told you about the job?

A. She didn't tell me about the job. She just told me that there was a job, that Triangle was hiring. I have to explain that.

Q. Give it in broad detail.

A. When I first left Williamsburg——

Q. You didn't leave; you were fired.

A. When I first got fired at Williamsburg, Miss Roman made a list for me of every name of company to look for work. I went to Triangle. They hired me, they gave me

money that I didn't like, the pay. But after seven months I had to go back and tell them, "Okay, I am accepting this money."

Q. Originally when you went to Triangle Steel you were referred to it by Miss Roman; is that correct? You say you got a list of names.

A. Yes.

Q. Who gave you that list?

A. Miss Roman.

Q. You didn't dig that up out of your own mind, did you?

A. I told you before.

Q. Who did you speak to at Triangle when you went the first time?

[551] A. Somebody named Dave, the head of the drafting department.

[fol. 506] Q. Did he hire you at that time?

A. He wanted to hire me.

Q. Did you go to work?

A. At this time?

Q. The first time, yes.

A. No.

Q. Did you go around to the other shops?

A. Some shops, yes.

Q. But you didn't take any job; is that right?

A. No, sir.

Q. Seven months later you went back to Triangle again; is that right?

A. Yes, sir.

Q. Who asked you to come here today to this hearing, Mr. Vaval?

A. I talked to my shop steward.

Q. What is his name?

A. I don't know his name. I went to the job, I don't have time to hear any name. He was the shop steward of the union——

Q. You were too busy.

Mr. Weissman: Mr. Raphael has continuously argued with the witness and put in remarks to disturb the witness. I don't think that at the time has he given the witness an opportunity to answer questions properly and I think Mr. [552] Raphael should conduct himself in the same type of conduct that he expects the witness to conduct himself.

Mr. Raphael: I won't pay any attention to that statement because it is removed from the truth.

Trial Examiner: Proceed.

By Mr. Raphael:

Q. You say you don't know the name of the shop steward; is that correct?

A. No, sir.

Q. When did you go to see the shop steward?

A. Monday, my first day at the job.

Q. What did you tell the shop steward?

A. I told him that I heard there was a hearing in the case and I would like to testify.

Q. You told that to the shop steward?

A. Yes.

[fol. 507] Q. Did you tell it to Mr. Raimist?

A. Who? If I told that to Mr. Raimist?

Q. You hear what I am saying.

A. I don't hear you.

Trial Examiner: Let the reporter read the last question.

(Question read.)

A. No, sir.

Q. Did Mr. Raimist ever speak to you telling you that you were going to come here to this case to testify?

Mr. Weissman: May we have a date?

[553] Mr. Raphael: At any time in the world.

A. I think I speak to Mr. Raimist yesterday night.

Q. Where did you speak to him?

A. I call him——

Q. Where?

A. I was at the drug store on Broadway.

Q. Broadway and where?

A. About 39th Street, or something like that.

Q. Where do you live.

Mr. Weissman: He hasn't answered the original question and he is four questions ahead of him.

By Mr. Raphael:

Q. You called Mr. Raimist last night?

A. Yes, sir.

Q. Where did you call him?

A. I called him at the local, the union local.

Q. Had he called you before?

A. No, sir.

Q. When was the last time that you spoke to Mr. Raimist before yesterday?

A. It was when I first got fired.

Q. In June of 1958?

A. Yes, sir.

Q. And yesterday you called up Mr. Raimist; is that right?

A. Yes, sir, because my shop steward had called him before. I don't know who he talked to, but he told me that maybe this [554] could interest the case.

So I called Mr. Raimist and I told him what I wanted; that I wanted to be a witness.

[fol. 508] Q. You told Mr. Raimist that you wanted to be a witness?

A. Yes.

Q. Mr. Raimist had never called you to be a witness, had he?

A. Not before.

Q. You testified that in June or July of 1958, when you went up to see Mr. Raimist, you told Mr. Raimist about the conversation you had with Mr. Halpern; is that correct?

A. Yes, sir.

Q. And your testimony now is that Mr. Raimist didn't call you to be a witness here, but you called Mr. Raimist; is that correct?

A. Yes sir.

Mr. Raphael: I have no further questions, none at all.

Re-direct examination.

By Mr. Weissman:

Q. Mr. Vaval, after you told the shop steward of your interest in the case, did he come back at a later time and talk to you about it?

A. Yes, sir.

Q. What did he tell you?

Mr. Raphael: I will object to that as hearsay.

Mr. Weissman: Mr. Examiner, there has been all kinds of [555] testimony here with respect to these conversations. Mr. Raphael has questioned him thoroughly.

Mr. Raphael: You could have objected. I am objecting. You didn't and I do.

Trial Examiner: You asked for conversations that were hearsay.

Mr. Raphael: I asked him about what he said to the shop steward on that one given day. This is not my conversation.

Trial Examiner: The objection is overruled.

You may answer.

By Mr. Weissman:

[fol. 509] Q. Do you remember the question?

A. After I talk to the shop steward, did the shop steward come back to me to tell me something?

Q. That is correct.

A. Yes, sir.

Q. What did he say to you?

A. To call Mr. Raimist.

Q. Then, as you testified, you called Mr. Raimist?

A. Yes, sir.

Mr. Weissman: I have nothing further.

Recross-examination.

By Mr. Raphael:

Q. Mr. Raimist didn't call you at Triangle Steel, did he, at any time?

A. I called him yesterday——

[556] Q. Did Mr. Raimist call you?

A. At Triangle Steel?
Q. Yes.
A. No, sir.
Q. Have you got a phone at home?
A. Yes, sir.
Q. Did he call you at home?
A. No, sir.
Q. Did he call you anyplace?
A. I don't think so.

Mr. Raphael; No further questions.
Trial Examiner: Thank you.

(Witness excused.)

Trial Examiner: Anything further?
Mr. Weissman: No, sir.
At this time I wish to offer in evidence General Counsel's 11 for identification, 12 for identification, 13 for identification, 14 for identification, 15 for identification, General Counsel's 23 for identification, 24 for identification, 25 for identification, General Counsel's 27 for identification, and also a document which has not been identified, but which appears—well, that's all. I will withdraw the last document.
Trial Examiner: Those are the notes of Mr. Raimist.

[fol. 510] COLLOQUY

(Mr. Weissman hands documents to Mr. Raphael.)

[557] Mr. Raphael: I can see this is marked with a circle around "At first conference." This is not the first conference. We had meetings in June.

Mr. Raimist: Those were meetings before certification.

Mr. Weissman: That was subsequent to the request for bargaining. The first meeting testified to was August 30th.

Mr. Raphael: No. We met before that, too. As a matter of fact, we have a letter from Mr. Raimist dated March 21st, 1956 requesting recognition to bargain, and we did meet——

Mr. Weissman: You know that is prior to the representation case.

Mr. Raphael: No, I don't.

Trial Examiner: You are repeatedly interrupting one

another. I wish you would both allow the other to finish a statement.

Mr. Raphael: The second one is G. C. 12, and it is purportedly of October 2nd, 1956; the G. C. 13 is purportedly the third conference of October 10th; G. C. 14 is purportedly the fourth meeting, October 18th, 1956—I am reading from the legend on the paper here. G. C. 15 is purportedly the one of December 5th, 1956.

Trial Examiner: Excuse me. I think that first one you wrote down, didn't you say August 30th, 1957?

Mr. Newmark: It is 1956. I was wrong.

Mr. Raphael: G. C. 23 is purportedly the minutes of a [558] meeting of April 4th, 1957; and Exhibit 24 for identification is purportedly the minutes of a meeting of April 11th, 1957; and G. C. 25 is purportedly the minutes [fol. 511] of the meeting of May 1st, 1957; and G.C. 27 is purportedly the minutes of a meeting of May 13th, 1957; and they all appear to be in the handwriting of Mr. Raimist.

Mr. Newmark: We well make our objections after the recess.

Trial Examiner: All right. We will recess.

(Short recess taken.)

Trial Examiner: The proceeding will be in order.

Mr. Weissman: May we have a ruling?

Trial Examiner: Yes. We have the offer for these exhibits.

Mr. Raphael: Let us hear what he has to say first.

Mr. Weissman: I would like to dispose of this first.

Mr. Raphael: Does your statement have to do with these things?

Mr. Weissman: No.

Mr. Raphael: I object to it because I think there is a lot of self-serving material and I notice it is a repetition, things that have been testified to, there are a lot of incompetent statements contained in those writings, and I object to them.

Mr. Weissman: Mr. Examiner, two of the meetings have [559] already been put into evidence by Mr. Raphael, and it is the General Counsel's opinion that it is proper to round out the record to put all of the notes before the

Trial Examiner, that if he is going to have two of the meetings before him, why then he should have all before him

[fol. 512] Mr. Raphael: We are mixing apples and grapefruits. Mr. Weissman brings in a situation which has absolutely no relevancy to this.

Those two other things which are offered in evidence are offered for a limited purpose. They were based on what I thought were contradictions of the witness's testimony. I don't want to go into these minutes here because I would have to reopen the case, I have to put the witness on the stand again, I have to take his testimony *de novo* again, I will have to try to show that there were inconsistencies between these pieces of paper and what he said on the witness stand. We would be here for another week and-a-half.

Trial Examiner: As I recall it, the only purpose served by those notes was to refresh Mr. Raimist's recollection with what took place at these meetings?

Mr. Weissman: Yes, I understand the problem. However, I would like to say that you have had two of these before you at this point and I think it would be helpful to have them all before you.

Mr. Raphael: I cannot see that.

[560] Trial Examiner: I think counsel is right. I think those were offered to impeach the testimony of the witness in connection with those meetings. But if these exhibits were only used to refresh his recollection and he testified, I see nothing to be gained by cluttering up the record with them.

The objection will be sustained. They will be placed in the rejected file.

(The documents previously marked for identification as General Counsel's Exhibits 11, 12, 13, 14, 15, 23, 24, 25 and 27 were rejected.)

Mr. Weissman: Mr. Examiner, at this time I wish to offer an amendment to the complaint.

[fol. 513] Trial Examiner: Give me the formal papers, please. What paragraph?

Mr. Weissman: This would be under Section 10.

Mr. Newmark: Paragraph 10?

Mr. Weissman: It would be in addition to Paragraph 10. It would be a subsection.

Trial Examiner: Your last one is "E"?

Mr. Weissman: That is right. This would be 10-F.

It is requested that the complaint be amended to include 10-F:

"During the period 1956 and at various times thereafter to date Respondent Employer unilaterally granted merit [561] increases to employees in the unit described in Paragraph 7."

In support of this amendment, Mr. Examiner, I wish to state that this amendment has been—I withdraw that.

That Paragraph 10 itself I think encompasses this type of activity but that to be more specific and explicit I am asking that this particular paragraph be added to Paragraph 10.

Mr. Raphael: I object to it.

Mr. Weissman: Mr. Examiner, the evidence has been before Mr. Raphael; there is no question here but that testimony has been taken and Mr. Raphael is aware of the testimony. I don't know what valid objections can be made to this amendment at this time.

Trial Examiner: I think there is testimony on the record which was the subject of both direct examination and cross examination.

The motion will be granted.

Mr. Newmark: May we be heard before you make the decision?

[fol. 514] Trial Examiner: Go ahead, if you want to add anything.

Mr. Raphael: Do I understand from this present proposal which is being made here by Mr. Weissman that the idea is now to reopen this case all over again and bring in new evidence?

Mr. Weissman: No, Mr. Raphael.

[562] Mr. Raphael: I will seriously object to it, because I say—I don't know how the Board operates, but I know in our office we prepare cases for trial——

Trial Examiner: Mr. Raphael, I have heard you criticize the Board for lack of preparation of the case. Without saying whether or not that is justified or not, I don't think it is appropriate for you to repeat that.

Apparently, General Counsel is satisfied with his preparation of the case. If it isn't sufficient, it is just too bad. I don't think it is proper for you to repeat that comment.

Mr. Raphael: The reason I make that statement is that to expect lawyers to come in and—I will tell you one thing: This motion in a District Court would never be allowed in a million years.

Trial Examiner: I don't want to get into an argument with you. I practiced law for twenty-five years before I became a Trial Examiner. So I am acquainted with the procedure in the State and Federal Courts.

Mr. Raphael: They have a complaint here with specific items of complaint. They have alleged what they are and that was the proof in the case, and if there was any proof to the contrary, dehors these allegations and dehors these statements I object to them because they were not embodied in the framework of the pleadings.

[fol. 515] [563] Trial Examiner: With respect to this particular point, my recollection is that the evidence went in without objection, that you cross examined on the point. You didn't object on the ground that it was not within the pleadings.

So, as I say, my present view of the record here is that there is evidence which makes out a prima facie case in support of the allegation which he now seeks to incorporate in the complaint.

It is a common practice in Courts everywhere that where matters have been litigated the pleadings may be accorded accordingly. He is not offering new evidence or asking for a new case. Your evidence was put in.

Mr. Raphael: My objection is there.

Mr. Weissman: I have nothing further.

Trial Examiner: General Counsel rests.

Motion to Dismiss & Denial Thereof

Mr. Raphael: I move to dismiss the complaint on the grounds that the Board has failed by a fair preponderance of the evidence, has failed to prove the case.

Trial Examiner: It is not a question of the preponderance at this point.

The motion will be denied.

Mr. Raphael: Mr. McCarty.

[fol. 516] MICHAEL P. MCCARTY, called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as [564] follows:

Trial Examiner: Please give your full name to the reporter.

The Witness: Michael P. McCarty.

Trial Examiner: What is your address?

The Witness: 51 Barrington Street, Westbury.

Direct examination.

By Mr. Raphael:

Q. Mr. McCarty, during the years of 1956 and 1957, were you employed by the Williamsburg Steel Products Company?

A. Yes, Sir.

Q. In what capacity?

A. My title, I guess, is assistant squad leader.

Q. Were you paid on an hourly or weekly basis?

A. Hourly basis.

Q. You check your time in each and every day?

A. Yes.

Q. Did you work on the boards?

A. Yes.

Q. What part of your time did you work on the boards?

A. Ninety per cent of my time.

Q. Did you have any right to hire or fire people?

A. No.

Q. How long have you been with Williamsburg?

A. Eight years.

[565] Q. How many?

A. Eight years.

Q. Are you a draftsman or a lister?

A. Lister.

Q. Were you a member of Local 66?

A. Yes.

Q. From its inception?

A. At Williamsburg, yes.

Q. You paid your dues?

A. Yes.

Q. Attended meetings at Local 66?

A. Pretty much so.

Q. Did you know this young man that testified here, Mr. Vaval?

A. Yes, I know him.

Q. Who was employed with Williamsburg?

A. Yes.

Q. Do you recall this meeting in July of 1957 that we have been talking about throughout this case?

A. Yes.

[fol. 517] Q. Were you present at that meeting?

A. Yes, I was.

Q. How did you learn about the meeting?

A. I believe Sid Appel told me about it.

Q. Sid Appel was the union representative, Local 66's [566] representative?

A. Yes.

Q. And had been for some time; it that right?

A. Yes.

Q. What time of the month was this meeting? Was it in the latter part of July or the early part of July?

A. It was the latter part of July.

Q. What time of the day was the meeting had?

A. Around break time.

Q. Coffee break time?

A. Yes.

Q. You didn't check out your time when you had the coffee break, did you?

A. No.

Q. Did you have any idea of how long that meeting was going to take when you started the meeting or when you entered the meeting?

A. No.

Q. If you can remember, approximately how long in point of time did this meeting take?

A. It is a guess; roughly, an hour, I would say.

Q. Mr. Vaval has testified here recollecting the names of the people that he saw at this meeting, July, 1957. One of the names he mentioned was a fellow by the name of Manzuk, being a person that he saw at this meeting. He read off about [567] twelve or thirteen names, as I recollect. You know Mr. Manzuk, don't you?

A. Yes.

Q. If you see him, you know him, and I suppose if you saw him in July, 1957 you would know him?

A. He is a squad leader. Yes, I know him.

Q. Was he at the meeting?

A. No.

Q. Where was he at the time?

A. He was on vacation.

Q. How do you remember he was on vacation at that time?

A. Well, Pete and I have sort of an agreement, since I assist him. When he is out I pinch hit for him, so to speak, and that's exactly what I was doing.

[fol. 518] We take vacations back to back and he generally takes his after I do. I had just come back from my vacation a short time before that and he went out and I was sitting in, of course.

Q. Do you recall Mr. Vaval saying anything at this meeting about Mr. Halpern?

A. Not offhand. There were an awful lot of words spoken at the meeting. I don't recall Wes making any particular statements.

Q. Do you know Mr. Levy that was in this room before?

A. I spoke to him. I made a statement out for him.

[568] Q. When did you speak to him?

A. I guess it was a year and-a-half ago.

Q. Was it about that time he was interviewing people up in Williamsburg?

A. Yes, at the same time.

Q. How long did you spend with Mr. Levy when he interviewed you?

A. I would say an hour and-a-half, possibly two hours.

Q. That you were with him?

A. Yes.

Q. Did he ask you a lot of questions?

A. Yes.

Q. You gave him answers?

A. Yes.

Q. Did he write anything down?

A. Yes.

Q. As you were talking?

A. Partly as I was talking. After I would stop I would

pause and he would continue writing. That's about the way it ran.

Q. This went on for about an hour and-a-half or two hours?

A. Yes, I would say.

Q. Did Mr. Levy say anything to you as you were talking to him? Did he indicate to you what the purpose of his mission was?

[569] A. No. As a matter of fact, I asked him. He didn't tell me—this is clear at this point, a lot of the conversation is hazy, but I remember at one point, it was towards the end of my statement, that I asked him a few questions regarding this, and he wouldn't answer me.

I said, "Give me a break. I am answering you. At least answer me."

[fol. 519] He said, "I can't." So it terminated at about that time.

Q. After he completed writing, did he have a yellow pad in front of him?

A. Yes.

Q. As you were talking he kept turning sheets, did you notice; he used one sheet and went to a second sheet and so forth?

A. Right.

Q. When he got through with all these sheets when you got through talking, did he ask you to sign anything?

A. Yes.

Q. Did you sign it?

A. Yes, I believe I did.

Q. Did you get a copy of what you signed?

A. No.

Q. Were you subpoenaed by the Board as a witness here?

A. No, I was not.

Q. As near as you can recollect, without going into [570] cumbersome details, briefly outline for us the highlights of this July, 1957 meeting which you attended.

A. Well, during the day Sid Appel came around to me and I guess we discussed the union and so forth, and he had told me at that time that we were going to have a meeting at break time. I assume he told others about it.

Around a quarter to four—between then and four o'clock—we took our break and we all gathered in the detailing

room, and Sid then—what the hell did he do?—yes, that's right, it occurred in the detailing oom and Sid or Herbie spoke of a list of demands which they were going to give to the company, I believe, and it incorporated proposals, you might say, as far as we could learn, superior to that contract which Local 66 had just gotten from Triangle——

Q. Pioneer?

A. Pioneer, that's right.

They sounded good. There was lots of discussion. I am jumping now, you understand.

It then came to a point when we voted on whether or not to retain 66 or resign from it. The vote was in favor of resigning. My vote was challenged, incidentally, as were a number of others after the vote was taken.

[fol. 520] Prior to the vote we had had a discussion and it was agreed that we would all accept this vote. The vote was then taken and a majority ruled in favor of resigning from the [571] union.

We then signed some papers; one I believe was a resignation from 66 and the other I am not sure, I think it was a request for certification. It was either affixed to or part of a request for certification by the National Labor Relations Board. It is a little hazy in my mind now.

Trial Examiner: Certification for whom?

The Witness: For recognition by separate association. We had knocked it around a little bit and we decided we could do a little more, probably, for ourselves than 66.

By Mr. Raphael:

Q. Mr. Vaval testified here today. Were you here while he testified?

A. Yes.

Q. Were you able to hear what he said?

A. Yes.

Q. Was it audible enough for you where you were?

A. Yes.

Q. Among other things, I believe Mr. Vaval testified that he told some people—some names he remembered and other names he didn't—but two names he remembered as being the names of people that on the same day that you had this meeting in July—he named two people; you and

a fellow Calculli, whom he told the following thing, in substance; repeating what Halpern had apparently or allegedly told him that day, to the effect that if he would vote against the union he [572] would see that he got a five-dollar raise and he would give him five dollars under the table.

Do you recall that testimony?

A. Yes.

Q. And Mr. Vaval testified, upon being cross examined by me, among other things, that you were one of those people, one of the two people that on that given day he repeated to you what Halpern had told him.

[fol. 521] I ask you, did Mr. Vaval in fact tell you that on that day?

A. I don't have any recollection of him telling me that.

Q. You don't remember that being said to you?

A. No. We spoke of many, many things that day.

Q. That doesn't stand out in your mind, does it?

A. No.

Q. Did anybody connected with the Williamsburg Steel Products Company ask you in any way what to do at this meeting of July, 1957?

A. No.

Q. Did anybody make you any promises before you went to this meeting of July, 1957?

A. No.

Q. Had you been a member of the union right up to this meeting?

A. Yes.

[573] Q. Had you attended any meeting of Local 66 before this meeting in July, 1957?

A. Yes. I believe there was one shortly before that that we had attended. I wouldn't know when, but I believe there was one close to it.

Q. Were you one of these people that paid that weekly strike assessment?

A. Yes.

Q. Was that a subject matter of discussion at this meeting?

A. Yes—wait now. It was the subject of discussion during the day, but whether or not it occurred right at

that meeting, I couldn't say for sure. We had many discussions on this.

There was a certain amount of dissatisfaction over having to pay $7.50. It worked a hardship with some of the fellows.

Mr. Weissman: If it was not a discussion of the meeting, I don't think it is competent.

By Mr. Raphael:

Q. Prior to this meeting of July, 1957, had Mr. Maimist or anybody from Local 66 kept you people abreast of what was going on, what negotiations were going on with the company, what the state of affairs was?

[fol. 522] Mr. Weissman: I will object to that. I don't see the relevancy of that question.

Mr. Raphael: The relevancy is this: I propose to show as part of our case that far from the company throwing the [574] sponge in, it was Local 66 that did many things and spoke out of two sides of its mouth, kept its members very ill-informed, they were ill-apprised and they themselves created a state of events and a state of a situation which resulted or culminated in doing what they did in coming to this meeting of July, 1957, and that is to dispel the proof and inferences that grew out of the proof that management was responsible for this meeting. I consider this an important part of our case.

Trial Examiner: Objection overruled.

A. I personally felt that we weren't well-informed on it. In fact, I found it hard to get information out of Sid Appel. I even had arguments with him from time to time. I resented the fact that he wasn't coming across and he implied that it was to my advantage not to be in on every little thing—how the hell did he put it?—that sometimes it is not well for everyone to know everything because something might get out to management. There was some logic in what he was saying.

Q. Was this taciturn attitude, was this something that was a subject matter of this meeting of July, 1957? In other words, was this lack of communication from Local 66 to the men a subject that was discussed at this meeting?

A. I would say yes, in general; at least within groups this was discussed.

[575] Q. At the meeting?

A. At the meeting.

Q. Were there any statements made at the meeting as to what management was going to do for anybody in the event a vote was one way or the other?

A. I don't recall.

[fol. 523] Q. While you were holding this meeting in July of 1957, do you recall seeing any of the bosses around?

A. No.

Q. You didn't know where they were, did you?

A. No.

Trial Examiner: What do you mean by "bosses"? Do you mean the executives?

Mr. Raphael: Yes. Well, I am speaking the workers' parlance.

By Mr. Raphael:

Q. Had there been any discussion at this meeting about the workers in the technical division organizing themselves?

A. Yes. We had discussed an association and we more or less formed one——

Q. Who was the one who suggested the formation of the association?

Mr. Weissman: I suggest that the witness be permitted to finish the prior answer.

Mr. Raphael: I'm sorry.

[576] A. (Continuing) I am not quite sure whether the association was formed right at that meeting there, but I believe something was instituted to the effect. I am pretty sure that some subsequent meetings solidified the formation of an association.

Q. Was Appel still the head of this group of workers?

A. Yes.

Q. At the meeting and after the meeting of July, 1957?

A. Yes. In fact, we voted Sid Appel as president of this association.

Q. Do you know where Sid Appel is at the present time?

A. I heard he is out of town, but that is rumor as far as I know.

Q. Have you been in touch with him at all, or he with you?

A. No.

Q. Had there been any discussions among the men prior to the meeting of July, 1957 about them organizing a group [fol. 524] among themselves?

A. There had been some rumors floating around.

Q. Had there been any talks about it, discussions?

A. My mind is a little hazy on that; I am not sure.

Q. There might have been?

A. There may have been. There was some rumor going around but I am not sure whether I was involved in it or not.

Q. This feeling among the men that you have described that [577] was building itself up, had that been the subject matter of any discussion at a meeting that the men had with Local 66 prior to this meeting of July, 1957?

Mr. Weissman: Mr. Examiner, Mr. Raphael characterizes that the feeling was building up. I suggest that he put his questions into such a way that he doesn't characterize things.

Trial Examiner: I think you ought to reframe the question.

By Mr. Raphael:

Q. You testified as to a certain feeling among the men, lack of communication from the union to them. Was that the subject matter of any discussion at a meeting which the men had at Local 66 prior to this meeting of July, 1957?

A. I don't recall. The last meeting I attended at 66, there was quite a bit of excitement, but I can't put my finger on it.

Q. What was the excitement about?

A. I believe some of the boys from Aetna were griping.

Q. Did the men from Williamsburg say anything at that meeting that you can recall?

A. I am afraid I can't recall.

Q. Were you familiar with this "Favored Nations" clause that was in the Aetna agreement?

Mr. Weisman: I will object to that.

Mr. Raphael: Let me show him the exhibit.

[578] Trial Examiner: He can answer that yes or no.

A. I know a little about it.

[fol. 525] Q. What do you know?

Mr. Weissman: I renew my objection. I don't see the relevancy about this witness knowing about that particular clause.

Trial Examiner: I don't know. The objection is overruled.

A. I believe it means that the contract that they have with Aetna has a clause in it which does not permit them to ask for something less than that contract with another company. I think that is what it is.

Q. Who did you know that from?

A. Joe told us that.

Q. Joe Raimist?

A. Yes.

Q. When did he tell you that?

A. A long time ago.

Q. Did he comment on that?

A. Yes. He said—let me see now—he explained——

Mr. Weissman: I will renew my objections at this point. I don't think that this testimony is relevant to the issues at hand. This gentlemen was not involved in bargaining, he had nothing to do with bargaining, he was not on the committee, he doesn't know what occurred at the bargaining sessions.

[579] Trial Examiner: Objection overruled.

A. (Continuing) I believe Joe explained it to us by saying that this is sort of protection for the men against, let us say, the bargaining committee in possibly accepting something less than that; that this was our protection. These were not his words, of course.

Q. Something to that effect?

A. Yes.

Q. During the eight years that you were employed by Williamsburg, did you from time to time receive promotions from one classification to another?

A. Yes, sir.

Q. Did that system in fact exist at Williamsburg, where people were promoted from one classification to another classification?

A. Yes.

[fol. 526] Q. When you were promoted, did you receive some additional pay as a result of that?

A. Well, as a matter of fact, the promotion was a raise in pay, you might say, rather than carry a title with it. It was a raise in pay until I reached a position of assistant squad leader, which has a title attached to it.

Q. In addition to these raises which are coincident to promotions, were there also merit reviews?

A. Yes.

[580] Q. And raises were given at those times?

A. Yes.

Q. Was that system in existence before you joined Local 66 as a member?

A. Yes. As a matter of fact, I was hired with the understanding that I would get certain raises quarterly until I reached a certain level, and then I would get raises every six months provided I knew what I was doing and up to a certain point. From there on, I am not sure what the story was.

Q. Were there other times when raises were given depending on how long you had worked in the place? Like a fellow was in the place one or two years, they would give him a longevity raise?

Mr. Weissman: I object. The witness can speak for himself.

By Mr. Raphael:

Q. Did you know of such a plan?

A. I know there were times that fellows got what we believe to be token raises, that they had reached a certain level and I guess the management, to show their appreciation, they would not give them as big a raise as a fifty-dollar man, but would give them two dollars or five dollars.

Q. There has been a considerable amount of testimony given here throughout the case about constant conferences and little meetings or little caucuses that were held during

the period [581] from about the middle of '56 until this meeting in '57.

Did you observe those little caucuses or meetings?

A. Yes.

[fol. 527] Q. Were you a participant?

A. Very often.

Q. Would you say they were of a frequent nature?

A. Yes.

Q. During working hours?

A. Yes.

Q. Did you observe Mr. Halpern or other members of Williamsburg trying to do something about that?

A. Yes.

Q. What did you observe?

A. I remember one particular gathering—I believe it was my fault—the fellows were in doubt about some questions regarding the National Labor Relations Board, and I made a telephone call to someone to get the answer to this particular problem and I got it and I called a few of the fellows together and I was elaborating on what the National Labor Relations Board man had said, and before a few minutes had passed more people had gathered in, and shortly thereafter we had most of the engineering department in.

Ernie came in and said, "What is going on here?" and I remember saying something to the effect, "Ernie, give me a break. I will take a few minutes only. Turn your back [582] once in a while." And he did; he walked out.

There were times we did it in defiance of the company, although it wasn't strictly that; it may have resembled that. It couldn't be helped. These things during a time of turmoil, these meetings——

Mr. Weissman: I will move that the latter part of the statement be stricken.

Trial Examiner: It may be stricken.

By Mr. Raphael:

Q. Did you find in your experience as being an assistant to some group chief, or whatever he was—did you find that this was interfering with the work that was going on there?

A. Yes; it couldn't help but interfere.

Q. Was there any statement ever made by any representative in Local 66 at any of their meetings, words or in effect, that the men should create a disturbance there?

[fol. 528] Mr. Weissman: At this point I will object to that going in. I don't see where this is relevant to this case at all.

Trial Examiner: Read the question.

(Question read.)

Trial Examiner: Objection sustained.

By Mr. Raphael:

Q. Was there any discussion at any of the meetings at Local 66 concerning the fact that these little meetings that you described to the Trial Examiner [583] were going on during business hours? Was that a subject matter of discussion?

Mr. Weissman: Before that question is answered, may I go back to the previous question and find out whether the answer was included in the record, because the witness did answer it.

Trial Examiner: Read the last question.

(Record read.)

A. At the meetings?

Q. Yes.

Mr. Weissman: Before that question is answered, may I hear that question once more?

(Question re-read.)

Mr. Weissman: I object to that question. It is not relevant.

Trial Examiner: Sustained.

By Mr. Raphael:

Q. Did you have a talk with Sid Appel about what to do with respect to the work that was on the boards in Williamsburg at peak periods?

Mr. Weissman: I will object to that also. This is apparently a conversation between this witness and Mr. Appel, who is an employee——

Mr. Raphael: He is acknowledged as the leader and [fol. 529] representative of Local 66. There is evidence in the case to that effect. He speaks under the authority of Local 66.

[584] Mr. Weissman: There has been no evidence of that type in this case.

Mr. Raphael: Yes, there has.

Trial Examiner: I don't think that the authority shown to exist goes so far as to show this kind of a statement. Sustained.

Mr. Raphael: My line of inquiry, if I were permitted to proceed, would be to the effect that we are ready to show that there was a plan afoot inspired and calculated and counselled by the representatives of Local 66 and their appointed representatives to slow down the work in the Williamsburg plant in the peak periods, and I understand that line of inquiry won't be received if appropriate questions were propounded.

Trial Examiner: I don't think this is the place for me to rule on quite that broad an offer. I sustained the last objection.

Mr. Raphael: If you don't make a categorical ruling, I will have to ask more questions.

Trial Examiner: I think the offer you make goes beyond what this single question would call for.

By Mr. Raphael:

Q. From your attendance of the meeting at Local 66, who was the head of your group representing Local 66 in the plant at Williamsburg Steel Products Company?

A. Sid Appel.

[585] Q. Was that statement made by Mr. Raimist, that he was representing the workers at the plant?

A. I believe Sid Appel was voted in.

Q. By the men?

A. He was voted into some position in the union. I am not sure what the title of it was, but apparently it permitted him [fol. 530] to go with Joe on these negotiations, and so

forth. At any rate, the men accepted Sid Appel as their representative for Local 66.

Q. Was Sid Appel the man you always came to to find out what was going on?

A. Yes.

Mr. Weissman: I will object to this line of questioning. I think that this is irrelevant. I think it is not competent testimony, and I am going to request that Mr. Raphael cease asking questions or that each question be ruled on with respect to this witness's answer.

It appears to me that every time Mr. Raphael is turned down he asks the same questions again and a third time until finally he makes about ten attempts before he finally gives up.

Trial Examiner: Will you read the last question?

(Question and answer read.)

Trial Examiner: The answer is in.

Go ahead.

By Mr. Raphael:

[586] Q. If you had any complaints to lodge or any information to impart to Local 66, who did you go to?

Mr. Weissman: Objection.

Trial Examiner: He may answer.

A. Sid Appel.

Q. Did the other men do the same things?

A. I assume so.

Mr. Weissman: I ask that it be stricken.

Trial Examiner: It may be stricken.

Mr. Weissman: Mr. Examiner, may I ask the witness not to answer questions until I have an opportunity to object?

Trial Examiner: Proceed.

By Mr. Raphael:

Q. Do you know who the men went to when they had to give information or lodge any complaints about what was [fol. 531] going on at Williamsburg Steel?

A. Yes; Sid Appel.

Q. Did you have any talks with Sid Appel before the meeting of July, 1957 about the performance of your work at Williamsburg Steel in connection with your employment during periods when you had what is known as a peak period of work? Did you have any discussion with him?

Mr. Weissman: I will object for the same reasons that I have stated for the last two or three times. That is not proper testimony at this time.

Trial Examiner: Sustained.

COLLOQUY

[587] Mr. Raphael: I will renew my offer of proof which I have made heretofore. I don't want to encumber the record.

I will say to you, Mr. Examiner, that if we were permitted to prove this, we would show a plan or a course of action designed to do things which would be detrimental to the company and which were motivated to bring about a submission to the demands of Local 66, and that this constituted an affirmative act on the part of Local 66, which would be a bargaining in bad faith, and created an obstacle to obtaining a contract and finally resulted in the impasse.

Trial Examiner: In your answer you have pleaded three affirmative defenses. I would like to know within which of those defenses the evidence you now speak of is shown.

Mr. Raphael: First, I say it is in my general denial. I state in the first affirmative defense, "That the respondents heretofore attempted to bargain collectively and in good faith with the charging union herein and that the representatives of the charging union by their own affirmative acts [fol. 532] and conduct made further collective bargaining impossible and futile because of their obstructive, unreasonable and unconstructive and adamant position taken throughout these collective bargaining negotiations."

I say this is an element of obstruction that they have placed in the way of finding a flexible employer who was willing to sit down at the bargaining table with them.

[588] If you are going to bang a man over the head with a bottle, you will not find a very happy man on the other side of the table. That is the point of my case.

Mr. Weissman: Mr. Examiner, it doesn't appear in my reading of the affirmative——

Trial Examiner: Your objection is sustained.

Mr. Raphael: If my pleadings are not broad enough to be susceptible of this type of proof, if it be on a technical issue, I move at this time to amend my answer to plead specifically, as a part of my further defenses, that the union by its own course of action did things including the dictation of a work stoppage and slowdown, and that the testimony which I would want to give under this affirmative defense, if my amendment would be permitted, would prove that that was the fact.

Trial Examiner: That is another problem altogether.

Mr. Raphael: I move to amend.

Trial Examiner: What is the position of the General Counsel?

Mr. Weissman: It is first the position of the General Counsel to know exactly what the amendment is. It seems to be rambling on.

Mr. Raphael: I made my position clear. If you want the exact words, I will give them to you.

Mr. Newmark: I think I can restate it.

[fol. 533] [589] Motion was made by respondent to amend its answer to include as a part of its affirmative defense the following language:

"That the union by its conduct, including slowdowns, work stoppages and other activities at the plant, not necessarily limited to the foregoing, did in fact make bargaining impossible."

That is the specific amendment.

Mr. Weissman: Before I make any statement with respect to this amendment, Mr. Examiner, I would want particularization as to dates.

Mr. Raphael: I will give you that. It was between July 15th, 1956 at various diverse times, and on or about July 15th, 1957, the exact times and places which are presently unknown to the respondents.

Trial Examiner: Off: the record.

(Discussion off the record.)

Trial Examiner: We will recess to 9:30 tomorrow morning.

(Whereupon, at five o'clock P. M., Wednesday, February 4th, 1959, an adjournment was taken to Thursday, February 5th, 1959, at 9:30 o'clock A. M., at the same place.)

[fol. 534] [590] Stenographic Transcript of Testimony at Hearing of February 5, 1959.

[591] PROCEEDINGS

Trial Examiner London: The proceeding will be in order.

Mr. Weissman: Mr. Examiner, with respect to the respondent's motion to amend the answer, General Counsel opposes the motion for the following reasons:

The bargaining in this case was conducted roughly between July of 1956 and May 13th, 1957. Assuming that there were activities which allegedly were unprotected during that period, respondent has obviously waived any rights that they might have during this period by continuing to bargain.

The second reason is, the General Counsel in this case has alleged certain specific acts as violative of Section 8 (a) (5) of the Act. While it might be argued that the respondent would have the right under certain circumstances to stop negotiating, it is a completely different matter to take affirmative steps which would include changes in working conditions during that period.

For these reasons I think the motion to amend the answer should be denied.

Mr. Raphael: I think you are mixing up apples and grapefruits. There are two things. One is the question whether we did or did not do things unilaterally, and if we did, whether we were right in doing them. That is one thing. That is not what my amendment is directed to.

[592] My amendment is directed to—as you have correctly indicated—that if a union does certain things which [fol. 535] indicate that they are not fit to be bargained with, that they make situations impossible, in other words, unlivable, we have a right to refuse to bargain with them. There is no doubt about it.

That is one of the objects of our proof. I am not only going to prove it by this individual, but I am going to prove it by Mr. Finkel and Mr. Schwartzberg, that our situation over there was unlivable, and I am trying to prove it was calculated that way.

I think it is a proper objective. That is my point.

Mr. Weissman: Mr. Examiner, that is exactly the point.

During this entire time bargaining was going on——

Mr. Raphael: We didn't waive anything. We did this in an atmosphere of compulsion.

Trial Examiner: Let him finish his statement.

Mr. Weissman: While the bargaining was going on, the company waived whatever rights they had at that time.

Furthermore, did the company suspend bargaining? Did the company file an unfair labor practice against the union? They did none of these things. But they took affirmative steps, you see, which is completely different than any rights that they might have had with respect to stopping the negotiations.

[593] Trial Examiner: For some of the reasons assigned by the General Counsel, and for the further reason that I don't think it is appropriate that at this stage of the proceeding the answer should be amended to interpose a defense which I think would prolong this hearing and interject new issues into the case which never have been suggested before, for all these reasons the motion will be denied.

Mr. Raphael: I think the record is replete with evidence [fol. 536] this far in the case that there have been a lot of stoppages in work; people were holding meetings, doing a lot of things, and without an explanation, no inferences can be drawn.

I will say no more about it. My offer of proof is in the record.

I have no further questions of Mr. McCarty.

MICHAEL P. MCCARTY resumed as a witness called by and on behalf of the Respondent, and having been previously duly sworn, was examined and testified further as follows:

Cross-examination.

By Mr. Weissman:

Q. Mr. McCarty, you are the president of the association, the independent union?

A. Yes.

Q. How long have you been president of this union?

A. This is my second term of office. It began in January.
[594] I was re-elected in January. It was first elected a year ago this January.

Q. Has this organization been meeting for a period of time?

A. Yes.

Q. Have the meetings been held on company property, as has been testified?

A. Yes.

Q. I notice you have been sitting in during these hearings for some week or so. Were you subpoenaed by any one to come here?

A. No.

Q. Have you been here in the nature of an observer?

A. Yes. I am to give a full report back to the men at my next meeting as to what went on during this hearing.

Q. When did you learn that you were going to be a witness here?

A. I learned it just the other day. I think it was two days ago that I learned it.

Q. How much are you paid each week.

A. By Williamsburg?

[fol. 537] Q. Yes.

A. The base pay is $129.

Q. What day of the week are you paid?

A. Wednesday.

Q. That was yesterday?

[595] A. Yes.

Q. Did you receive $128 yesterday?

A. I haven't received my check.

Q. Did you receive $128 the prior week?

A. Yes.

Q. And you were here the first day of the hearing?

A. Yes.

Mr. Raphael: The first day of the hearing was Wednesday. He didn't get the check for that week. Let there not be drawn any inference for this record.

Mr. Weissman: Thak you, Mr. Raphael.

By Mr. Weissman:

Q. In your direct examination you called yourself an assistant squad leader.

A. Yes.

Q. Do you also sometimes refer to yourself as the vice chief of the department?

A. Yes.

Q. So that these names are sometimes interchangable in a sense?

A. We assume our own titles at times.

Q. Where did you learn about this title of assistant squad leader?

A. Where did I learn about it?

Q. Yes.

A. It is kind of a difficult question to answer.

[596] Mr. Raphael: I will object to the form of the question. There is no testimony he learned about it. The testimony is that he arrogated that title to himself.

Trial Examiner: Read the question, please, Mr. Reporter.

(Question read.)

Trial Examiner: You may answer.

The Witness: Well, it was never officially given to me. I am the most senior man in the place next to Pete Manzuk. I assume I am the most qualified to handle his job if he [fol. 538] were not there, and as a matter of fact this has been accepted by everybody.

By Mr. Weissman:

Q. I asked you a question as to where you learned of the title.

Mr. Raphael: Same objection.

A. I am trying to think of where it was given to me. Well, the answer is I have never been given the title of assistant squad leader.

Q. When is the first time you heard of this name?

Mr. Raphael: I object to the form of the question.

Trial Examiner: Yes. He explained that it is apparently one that he just picked up, that it was never given to him officially by anybody.

By Mr. Weissman:

Q. You testified about a meeting that was held the end of July of 1957, and you testified that you were present at this meeting.

[597] A. Yes.

Q. Were you working at the company's premises all day?

A. Yes.

Q. Were you working in the same department as Mr. Vaval?

A. Yes.

Q. Mr. McCarty, as president of the association, you have made some attempts to get an election at the company; is that correct?

A. Well, I haven't made any attempts to get an election. I have asked the management from time to time why don't they get busy and get an election so that they can get a true vote as to what the men want. I never got any satisfactory answers to that.

Q. Did you make some attempt to come to the National Labor Relations Board to have an election?

A. Yes. I asked them. I asked Mr. Brissman at the National Labor Relations Board why he don't get an election going.

Q. Wasn't the case dismissed by this Board?

[fol. 539] Mr. Raphael: I object to that as incompetent. It has no bearing on this case, as to what happened with that petition.

Trial Examiner: Sustained.

By Mr. Weissman:

Q. Mr. McCarty, after the meeting of July, 1957, did you participate in any discussions with [598] management about negotiations on behalf of the independent association?

A. Yes. Well, we didn't negotiate. I have gone to Mr. Finkel from time to time and asked for certain things. He, in turn, hides behind the National Labor Relations Board by saying that he would be only too glad to do business with me if I were a legal bargaining agent, or recognized by the National Labor Relations Board. This is a stock answer that he gives me, because it is easy to say things like this.

The Witness: (To Mr. Raphael) Please don't get mad at me.

By Mr. Weissman:

Q. With respect to August of 1957, do you recall receiving an increase in August of 1957?

A. Yes.

Q. Do you recall that this was not the month that increases were normally given out?

Mr. Raphael: I object to the form of the question. It presupposes that this witness knows something which is normal or abnormal.

Trial Examiner: Finish the question, please.

Mr. Weissman: I did.

Trial Examiner: Read the question, please, Mr. Reporter.

(Question read.)

Trial Examiner: Sustained.

By Mr. Weissman:

Q. While you were with the company, did [599] you receive increases at more or less regular intervals?

A. More or less, yes.

[fol. 540] Q. Do you recall the months in 1957 when you received increases?

A. In August I received an increase. I don't recall whether I received an increase prior to that. I am not sure. I may have received one in January, but I am not sure.

Q. Do you recall whether you had any prior notices to the August increase?

A. Well, I would have to answer it in this way: That I had gone to management several times on my own, asking for increases. At one point I got fed up. This was some time in 1957. I told them if I didn't get something soon they better look for another boy, because I had gotten offers from several hollow metal outfits, and I wasn't going to stay around unless they decided to kick in a little bit. They kicked in in August for me.

Q. With respect to my prior question, did you have any prior notice that you were going to get that increase?

Mr. Raphael: I object. It was already answered. The witness fully covered it and said the circumstances under which he got it.

Trial Examiner: The objection is overruled.

A. I think I expected it, yes.

Q. You did expect it?

[600] A. Yes. I expected other raises that I demanded at times, depending on the circumstances.

Q. Mr. McCarty, who was the first president of the association?

A. Sidney Appel.

Q. The same individual who you stated yesterday had not been giving information to the employees?

A. Yes, that's right.

Q. While on the committee for 66?

A. Yes.

Q. I believe you stated yesterday that you worked for the company approximately eight years.

A. About eight years.

[fol. 541] Q. During part of that time Mr. Halpern was a chief engineer?

A. Yes.

Q. As I understand it, his office is adjacent to the drafting department?

A. Yes. It is in direct line with the listing department, his office, and he has a rather slight view of the detailing department which is separated from his particular department by a three-foot, four-inch high wall and a string of burrowed lines across.

Q. With respect to Mr. Halpern's activities, did he come around to your department during the day on occasion?

[601] A. He was in during the day.

Q. How many times would you say during the day he would be in your department?

A. I don't know. He floated from time to time. If I wasn't working, I spotted him. If I was, I wouldn't see him.

Q. You testified yesterday that you made a phone call to the National Labor Relations Board.

A. Yes.

Q. Did you make more than one phone call?

A. Yes, I did make more than one.

Q. Could you tell us approximately the dates of these phone calls?

A. I am afraid not. The reason I couldn't tell you the dates is because they happened at about the time that Local 66 was attempting to get into the hollow metal outfit, or at least into Williamsburg, so to speak. At that point we were all interested. I became sort of an unofficial delegate for the men to scrounge up whatever information I could, regarding 66, regarding union activities in general. It was comparatively new to us. From time to time I made phone calls, as did a few other people in the place.

Q. Mr. McCarty, you stated yesterday that when you were hired you were informed that you were going to receive periodic increases.

A. Yes.

[602] Q. As a matter of fact, during the time you were working for the company you did receive periodic increases.

A. Yes.

[fol. 542] Q. What kind of work did you do when you started with the company?

A. I was a beginner, a lister.

Q. Are you still working in the same department as a lister?

A. Yes.

Q. When you started to work as a lister you did work that didn't require too much experience?

A. Well, I was learning.

Q. As time went on you became more experienced?

A. Yes.

Q. You did more difficult work?

A. Yes.

Q. And as time went on periodically you would receive increases?

A. Yes.

Q. The increases that you were receiving, how did you normally become aware of the increase?

A. When I first went in, Mr. Schwartz, who interviewed me, told me the increases would occur every three months up to a certain salary bracket. Beyond that they would occur every six months, and beyond that most likely merit raises would come into play. I was fully aware of that.

I expected that [603] in March, in July, in October and in December or the beginning of January I would get raises.

Q. So that when you opened up you pay check you would see there was an increase there?

A. Yes.

Q. This is the way you became aware that you received an increase?

A. I was told about it.

Q. You were told originally that.

A. Yes. I found them to hold to that pretty much, with some exceptions.

Q. You would open up your pay check and you would see there would be more money?

A. Yes.

Q. When you opened up your pay check and you saw there was more money, was there also some kind of a note in there accompanying that?

A. No.

Mr. Raphael: What kind of a note?

The Witness: There were no notes.

By Mr. Weissman:

[fol. 543] Q. Just money?

A. Money.

Q. Did anybody come in to you and congratulate you?

A. Sometimes.

Q. In a period of one year, how many increases did you [604] receive? Let's say 1957.

A. I don't know. Ask me about the first year. I remember very clearly what happened, because I was expecting all my raises at that point.

Q. With respect to yesterday's testimony, you talked in terms of increases and promotions. You were receiving increases every three months, every six months.

A. Yes.

Q. How could you tell which increase was an increase for work that was performed, a merit increase, and which increase was an increase for promotion?

A. I believe I said yesterday that our promotions came in the form of increases without any change in title, but

you would have to assume by your own progress in your work that you were being promoted to a junior lister, senior, and so forth.

Q. Nobody came to you and told you this?

A. There were times they did, yes. Izzy came in. He was a previous engineer. He told me at times at which point I suddenly became a checker. It was obvious, but he told me at which point I became a senior lister. I was well aware of any advances that I had made. I had instituted one myself at one point. I asked for it and got it.

Q. Did you see anything in writing which outlined to you at any particular time that you would go from one to another?

[605] A. No.

Q. You say that the only way you could tell was either by your own feeling about your work——

Mr. Raphael: I object to the paraphrasing of the witness's answers. We had this all through this case. The witness testified the circumstances under which he got those increases.

[fol. 544] Trial Examiner: Sustained.

By Mr. Weissman:

Q. Mr. McCarty, with respect to Mr. Vaval, how long did he work with you in the same department?

A. I would say it was two years; roughly two years.

Q. Were you on friendly terms with him.

A. Yes.

Q. You talked to him every day?

A. I think so. I would say yes. Generally, I checked him from time to time. I checked his work.

Q. On the particular day of the meeting you did work with him in the same room during that day?

A. Yes. We were in the same room that day. He was always in listing and that is my department. That is where I always worked.

Q. Yesterday you testified with respect to Mr. Vaval's testimony. You were sitting in the room when you heard it. Could you tell us again whether you recollect any thing concerning that conversation?

[606] Mr. Raphael: I am going to object to the form of the question. It is a very negative kind of a question and it is a confusing question. The form is bad.

Trial Examiner: No. You realize, Mr. Raphael, that that is a very important part of this case.

Mr. Raphael: Of course it is. But it is important that correct questions be propounded.

Trial Examiner: You may answer.

The Witness: I would like to have it repeated.

(Question read.)

Mr. Raphael: Which conversation, may I ask, is he referring to? There are a few conversations that were had that day.

The Witness: There were a few.

By Mr. Weissman:

[fol. 545] Q. You don't know what conversation he was referring to?

A. We had many conversations.

Q. You were in the room yesterday when Mr. Vaval testified.

A. Yes.

Q. You heard him say that he had told you that day, the day of the meeting in late July of 1957, about a conversation that he had had with Mr. Halpern earlier the same day.

A. Yes, I heard him say that yesterday.

Q. Search your recollection and see whether you can recall whether there was any conversation of that nature between [607] yourself and Mr. Vaval on that day.

A. As a matter of fact, I have been thinking about that half the night. I can't recall anything to the effect. I don't recall Vaval telling me he was offered a bribe by Halpern.

Q. Is it because you just don't recollect any conversation or do you deny that he made that statement?

A. I don't believe he made that statement to me.

Q. You just don't believe he made it?

A. No, I don't believe that.

Q. You testified yesterday that at times you replaced Mr. Manzuk when he was away.

A. Yes. I sat in for him.

Q. How often does that occur?

A. Generally when he is on vacation; if he is sick; if he is called upon to do something down in the shop. But in general, not too often. I think the longest stretch I had one time was for a month, where Pete was in the hospital for three weeks' time, something like that. This was the longest period that I had replaced him.

Q. When he is away, what do you do for him that he normally does?

A. I try to keep his records up as best I can. I try to answer the questions that the men normally would ask Pete and advise in general as to the correct procedure how to list [608] lay-out and how the shop prefers to have things sent down to them.

[fol. 546] Q. Do you during that time walk around and look at the work of the people and see whether it is up to par?

A. Not generally. I have a considerable amount of my own work to do. I can't let it lay while I am sitting in for Pete. I can delay it, but I can't ignore it. In general I am sitting and doing my own work. If there is a call, of course I stop what I am doing.

Q. In that respect it is different than Mr. Manzuk, because he does less actual work than you do?

Mr. Raphael: I object to the form of the question. If counsel wants to get from the witness whether the witness knows the extent of the work of Mr. Manzuk, how much time he puts in, that is another matter. But as to a general categoric question, I object to the form.

Trial Examiner: Objection sustained.

Mr. Weissman: No further questions.

Mr. Raphael: No further questions.

Trial Examiner: Thank you.

(Witness excused.)

Mr. Raphael: I omitted to do something yesterday which I wanted to do. The statement of Mr. Languilli I think is in evidence, Exhibit 39. I would like the record to show that neither of the statements produced in evidence here as [609] Exhibit 39 have any reference therein contained to a statement which is attributed by Mr. Vaval, a witness in

this case, to have been made by him, among others, to Mr. Toby Languilli at or about the time of the meeting of July, 1957.

That is the only observation I have to make. I have read the affidavit very carefully and find no reference incorporated therein to that effect.

Trial Examiner: Isn't that a matter or argument?

Mr. Raphael: I just want to put it down because these are important things.

[fol. 547] JACK SCHWARTZBERG, called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please state your full name for the record.

The Witness: Jack Schwartzberg.

Trial Examiner: What is your address?

The Witness: 4750 41st Street, Long Island City.

Mr. Raphael: Mr. Trial Examiner, I would like to point out that for the puroses of abbreviating this case I had another witness who sat here with Mr. McCarty. His name is Eddie Strzelecki. I had him here as a witness.

His testimony, if given, would be cumulative in effect to that given by Mr. McCarty. I don't want to encumber the [610] record any further. He was here. I don't want any inferences to arise that I had man here and he was here and we didn't use him. He wasn't under subpoena. I used McCarty and I didn't think I had to use him because there was no need for it.

If Board's counsel wants to call him, he is available.

Direct examination.

Q. By Mr. Raphael: Mr. Schwartzberg, you are connected with Williamsburg Steel Products Company; is that right.

A. Yes.

Q. For how long have you been with them?

A. Since 1935.

Q. You have an engineering background, a technical engineering background?

A. I have an experience background. I have no degree.

Q. Through the years what has your work consisted of?

A. At the beginning, draftsman; subsequently I have been called the general manager of the plant.

[fol. 548] Q. Is that the position you have today?

A. Yes.

Q. Were you general manager of this plant, let us say, in 1956 and 1957?

A. Yes.

Q. In 1956 and 1957 this plant of Williamsburg Steel consisted of how many people in total. Take production and [611] non-production.

A. I don't remember. I would imagine somewheres around eight hundred; somewheres in that neighborhood.

Q. About eight hundred people, I am told by Mr. Finkel. Would that be about right?

A. Yes.

Q. The business of the company is done at a big factory in Brooklyn?

A. 59 Paidge Avenue, Brooklyn.

Q. Approximately how many production workers did you have and how many non-production.

A. Are you talking about the shop?

Q. The shop, yes.

Trial Examiner: At the same time?

Mr. Raphael: At the same time, 1956 and 1957.

A. I don't remember. There were about four or five hundred workers in the shop.

Q. The remainder would be non-production?

A. That's right.

Q. As to the non-production, is that geographically in another part of the plant?

A. For the most part, yes.

Q. In your non-production end of your business you then would have, according to your estimate, about three hundred people, between clerical and engineering and shipping, and [612] so forth; is that right?

A. It varies up and down. It would be less or more. We figure the non-productive workers as porters, factory maintenance men, and so on. I don't think it would run as high as three hundred in a very busy season. It might run as high as two hundred, possibly, normally.

Q. The people that work in the shop, are they organized by any union?

A. Yes, sir.

[fol. 549] Mr. Weissman: Mr. Examiner, I am going to request that that be stricken from the record.

Mr. Raphael: I think it is apropos to show the company's attitude on these matters.

Trial Examiner: He may answer.

A. Yes.

Q. You have teamsters. Are they under contract with the union?

A. Yes.

Q. Sheet metal workers?

A. Yes.

Q. Outside carpenters?

A. Yes.

Q. Iron workers?

A. Yes, sir.

Q. All these people are under contract?

[613] A. Yes, sir

Q. Those contracts you have had in effect for many years?

A. Yes, sir; as well as the shop itself.

Q. In your non-productive end of the plant, you say you have approximately between 250 and 300 people. According to the testimony in the case thus far, it would appear that in 1956 and 1957 the number of people in the technical end of the business—that is, engineers, draftsmen, listers, and so forth—vary between fifty and sixty. Is that a correct estimate?

A. Somewheres in the neighborhood of fifty.

Mr. Weissman: Mr. Examiner, I think that with respect to leading questions at this point, if Mr. Raphael is going to get into any kind of testimony that is important, that he restrict himself to non-leading questions.

Mr. Raphael: I will only lead a witness in order to save time. When it comes to the controversial part of the case, we are going to let the witness tell his story. But thank you for the admonition, Mr. Weissman.

Trial Examiner: Proceed.

By Mr. Raphael:

[fol. 550] Q. About fifty, you say?

A. I would say about fifty; in that neighborhood.

Q. These fifty people in the technical division do what?

A. They detail; they list. That is mainly what they do.

Q. Is there a functional relationship between the technical [614] division and your shop? In other words, does one depend on the other?

A. Only insofar as the interpreting of the details into shop orders are concerned, and to ask questions where full information may not be given to the shop in order to manufacture the products.

Q. Assume that you had no drafting and no listing. Would your shop be able to function without that information?

A. Parts of it would. The shop would be able to function, generally speaking, without the listing department.

Q. But how about the drafting?

A. This is questionable. It probably would not be able to function under certain conditions. Certain types of work it could, but other types it couldn't.

Q. Prior to 1956 and 1957, among your duties did you have charge of the drafting and listing and technical division of the company?

A. I am nominally the head of these sections.

Q. Were you following their activities, knowing what they were doing?

A. Generally speaking, yes.

Q. Did you have any method or plan under which you had classifications of different types of workers in the technical staff?

A. There were general classifications which were set up [615] mostly by the head of the drafting department, which to a certain extent I took cognizance of. I wasn't too concerned with these terminologies, as to the classifications. Of course, roughly speaking there were classifications that they put down as they meant them. I wasn't too concerned with these classifications.

[fol. 551] Q. They were classifications?

A. We would call them classifications. There were no fine lines drawn.

Mr. Weissman: Mr. Examiner, I think the witness has answered the question.

By Mr. Raphael:

Q. Did you have apprentice draftsmen?

A. Yes.

Q. Did you have junior draftsmen?

A. When we come to the junior draftsmen, it is a question just where they start and end, and so on. I was cognizant more or less that when a man was an apprentice and when a man was a senior man.

Q. Was the head of the drafting division in charge of these classifications?

A. Yes.

Q. A man like Halpern?

A. Yes.

Q. That was left to him?

A. That is correct.

[616] Q. Over the years was there a system—if there was, you tell us; and if there wasn't, you tell us—under which varying types of increases were given from time to time?

A. We had a review system over the years in which the lesser men were reviewed more frequently than the higher salaried men. We did draw attention to the men when they began at a certain rate, sixty-five dollars or seventy-five dollars a week, I don't remember, and we would review them every three months, and above that we would review them every six months.

However, these reviews, insofar as I am concerned, as to whether we would give them any more money in their salaries, was based on the question of their ability to perform and as they made progress as the time went by.

Q. Mr. Halpern testified in this case that from time to time at various periods he would come in and go over various employees with you. Do you recall that?

A. That is correct.

Q. It was his testimony that you had the last word in that matter. Is that correct?

[fol. 552] A. I had the last word. Let me clarify that, if you don't mind. I had the last word insofar as reviewing

these men were concerned, as to whether they were entitled to additional monies.

However, prior to giving such monies, I would total them [617] and see what they would amount to at any particular period and see my superior, Mr. Katz, and show him the situation, and if I was able to receive the money that I requested, it was distributed.

Q. You had to check with the treasurer?

A. Usually.

Q. There was a chart introduced here, General Counsel's Exhibit 30-A, B and C. This is a photostat of a copy of the original made which purportedly indicates the names of the people in the technical division, or at least some of them, and columns of various dates showing revisions in wage or salary levels.

Are you familiar with this exhibit?

A. Yes.

Q. I notice that in some cases we have wage figures for some of the workers and then they become salaried figures, is that correct, or what does that mean?

A. It doesn't mean anything in particular. I am not very scrupulous about my method of writing things down. I have a bad habit of not being consistent in the manner of doing these things. Sometimes I would figure out their hourly wage and translate it into salary.

Q. You try to round out the numbers?

A. Yes. There is no particular reason for any one of these things. Sometimes it is hard to figure in these four-point [618] situations, where they have, for instance, over here, .1875 cents. It becomes difficult, so I translate it into dollars, or the nearest thing to it, or something like that. There is no reason for using either one or the other.

Q. I would like you to look at the figures here in Exhibit 30A through C and tell us whether you had something to do with the preparation of these figures.

A. Yes.

Q. And you are familiar with them?

A. Generally speaking.

[fol. 553] Q. After reviewing these figures and having been one of the authors or the author of these figures, can you tell us whether or not when you made the wage and salary revisions in 1957, in January, April, August

and whatever months they are shown there, what particular connotation can you give to those increases?

Mr. Weissman: Mr. Examiner, I think the question is vague.

By Mr. Raphael:

Q. Explain them.

Mr. Weissman: I don't think that question can properly be answered.

Mr. Raphael: I was asked not to lead this witness. I am trying to conform with the admonition that was given to me by counsel. If I am to lead this witness, I am perfectly willing to do it.

[619] Trial Examiner: Do you understand the question?

The Witness: I have an inkling.

Trial Examiner: I have an inkling, too, but do you understand the question?

The Witness: He wants me to explain the reasons for these wage adjustments.

By Mr. Raphael:

Q. What they represent and the reasons for them.

A. The wage adjustments, as I tried to explain before, were made at various times of the year. The question as to merit or the question as to values is a moot one. This isn't a question of the time that is involved. The time was simply something that we created a system so we shouldn't fall down on the job and forget to see what was going on, whether these men deservedly were reimbursed for their time and for their experience, and so on.

So we made a system more or less to conform to certain periods of the year, and the chief draftsman, whoever he was, in order to take care of his men—and that was one [fol. 554] of his jobs, to see that they are kept happy—would come in and badger me, "Well, the time has come to make a review." So we would sit down and make a review and we would go over the various men.

He would say, "I think this guy deserves so much money."

"Why?"

[620] "Well, he has improved. He has shown this and

he has shown that. He is capable," and so on and so forth.

We would argue around and then go down to the next guy. I would ask him what suggestions he had and he would say five dollars, four dollars, three dollars, whatever it happens to be.

After questioning and feeling around and seeing if it was true that the man seemed to be okay, I would put it down. I would put it down immediately, as a matter of fact, but I would question about it.

Finally, we would arrive at either accepting the chief draftsman's proposal or altogether denying it or come to some compromise. I would go over the figures and I would always say to him, "Well, now, so far this is the way it looks, but you aren't certain until I let you know that this is going to happen."

Whereupon I would calculate the totals on a piece of paper somewheres and go in to Mr. Katz and say, "It is going to cost us so much more a year. Are you going to give it to me?"

"What can I do? Okay."

Sometimes it would be "yes," and sometimes here and there it would be "no." Even then, I would occasionally check and make sure with Halpern, or his predecessor, whether the man deserved additional monies.

[621] This generally was the method of conducting this review.

Q. And it was in pursuance of that general plan that these revisions were made from time to time?

A. Yes, sir.

[fol. 555] Q. Did you participate in the negotiations with Local 66?

A. No, sir.

Q. You didn't have any connection with that?

A. I had nothing to do with it.

Q. Were you in that at all with management, going over those things?

A. To a very slight extent; just advisory here and there. I preferred not to be involved.

Mr. Raphael: You may inquire.

Cross-examination.

By Mr. Weissman:

Q. With respect to this review system, was there any procedure for men that were there under three months?

A. There was no particular review. Let me try to recollect or reconstruct what happens in that situation. A man is sometimes hired by the chief draftsman at a salary that the individual isn't willing to work for, but he is told that if he shows the slightest improvement in a month or two months, or whatever period of time he gives him, he will increase him, or else he will fire him, and sometimes this happens. Of course, the termination period is usually the time of [622] either the three or the six-month period. With beginners, it is very discretionary.

Q. Referring to these exhibits, Mr. Schwartzberg, you said these were prepared at your request. Could you tell us whether this column five represents August figures rather than July, if you know?

Mr. Weissman: I will point out to the witness in the other two sheets July was crossed out and August was put in there instead.

By Mr. Weissman:

Q. Do these figures here represent August figures or July figures?

A. To tell you the truth, I don't know.

Mr. Weissman: I have no further questions.

[fol. 556] Colloquy

Trial Examiner: You are excused.

(Witness excused.)

Trial Examiner: We will take a five-minute recess.

(Recess taken.)

Trial Examiner: On the record.

Mr. Weissman: Does the General Counsel have the authority to substitute photostats for originals with respect to exhibits?

Trial Examiner: Is there any objection to that request?

Mr. Raphael: Substitute photostats for the originals?

Mr. Weissman: Yes.

Mr. Raphael: I think I would in some instances object. [623] Ordinarily I never object to this, but certain things stand out in my mind on the case. When Langiulli testified and I was standing over his shoulder and he read his statements, the supposed initialings were very blurred. The photostats would never show that to a reader.

Trial Examiner: Is that all?

Mr. Raphael: I don't think I have any questions about the other ones.

I know there was another statement where I said something was written into a line. That was Wisniewski's statement. That was another situation.

Trial Examiner: That was pretty clear on the original. [fol. 557] Mr. Weissman: Yes.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Raphael: I have no objection to the following being done: Other than the Langiulli exhibit, which is General Counsel's Exhibit 39—apart from that, the remainder of the exhibits, which are in and of themselves not photostats, may be photostated and deemed to be the exhibit replacing the original exhibit.

Is that agreeable with you?

Mr. Weissman: Yes.

Trial Examiner: The request with that stipulation is [624] granted.

* * * * * * *

[665] After recess.

(Whereupon, at 1:30 o'clock P. M., the hearing was resumed, pursuant to the taking of the recess at 12:30 o'clock P. M.)

Trial Examiner London: The proceeding will be in order.

Mr. Raphael: Can we take a witness out of turn, a short witness, just to refute something?

Do you have any objection to that, Mr. Weissman?

Mr. Weissman: I don't object to putting the witness on, but I do object to your characterizing his evidence.

Mr. Raphael: Don't pay any attention to me.

[fol. 558] Ernst Halpern, called as a witness by and on behalf of the Respondent, and having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Raphael:

Q. Do you recall an employee by the name of Vaval working for Williamsburg?

A. Yes.

Q. Mr. Vaval testified that on the day that the meeting took place in July of 1957—you know the meeting I am talking about, don't you?

A. That's right.

Q. Everybody has been talking about it.

[666] Mr. Vaval testified that on the morning of that day, or some time during that day, you and he had a conversation in which you said to him, in words or substance, that he should vote against the union, Local 66, and for that you would get him a five-dollar raise a week and five dollars a week under the table; that he, of course, rejected your offer, and then he said he went to the meeting and he did not vote against the union.

Can you tell us whether you recall having any such conversation with Mr. Vaval?

A. I had a conversation with Wes Vaval in July pertaining to his work and his moving up into a new classification. He was a small-order lister——

Mr. Weissman: I object to this and ask that it be stricken. It has nothing to do with the question. The question concerned a specific conversation and Mr. Halpern is now talking about some other conversation.

By Mr. Raphael:

Q. Did you have such a conversation?

A. No.

Q. Do you recall having any conversation at or about that time with Vaval concerning any raises or increases in pay?

A. Yes.

[fol. 559] Q. Tell us what you recall?

A. About this time Wes Vaval was supposed to move up from a small-order lister—which is a man that handles very [667] small orders only for which we don't keep any time record—into a regular listing position, which was a change in position, you might call it.

He came to me and said, "Look, I am supposed to advance. I am supposed to get more money."

I said, "You got an increase July 1st."

He said, "Yes, but now I am shifting into a new position."

I said, "All right; let me see what I can do. I will try to make it outside the regular review as something extraordinary," and I succeeded in getting him an increase. It was a little hard work, because management never believed in big raises—pardon me—but I succeeded in getting another five-dollar increase, and I believe it was some time around the end of July. It had nothing to do with any union or anything else.

Mr. Weissman: I ask that the latter part of that statement be stricken from the record.

Trial Examiner: It may be stricken.

By Mr. Raphael:

Q. Did you or anybody in the company ever pay this gentleman any money under the table, any five dollars a week under the table?

A. No, sir. We don't pay anything under the table.

Q. Have you brought here some sheets bearing on the question of merit reviews?

A. Yes.

[668] Mr. Raphael: I ask these sheets be marked for identification.

(The documents above referred to were marked as Respondent's Exhibits Nos. 10-A, B, C and D for identification.)

By Mr. Raphael:

[fol. 560] Q. I notice these sheets are for the years '56 '57 and '58.

Mr. Weissman: Before you proceed, can I have just one moment until I find 30-A, B and C?

Mr. Newmark: I have looked for them through the recess. I couldn't find them. You may have them.

Mr. Weissman: Yes, I have them.

Mr. Raphael: He had them all the time.

By Mr. Raphael:

Q. These sheets are dated '56, '57 and '58. What do they contain?

A. They contain the average hourly output of the listers in the listing department.

Q. Who prepared these?

A. I prepared them, based on the work that they made.

Q. What is the purpose of these sheest?

A. To see the amount of production produced per every man per week.

Q. I notice initials in the first column with the heading of listers. Do these initials represent the names of the people?

A. Correct.

[669] Q. I notice the initials "W. V." Who is "W. V."?

A. Wes Vaval.

Q. What was the purpose of these sheets? What are they used for?

A. During the review time I looked through those sheets as well as the book I had, where I booked all the errors that the men made, to get a picture about the value of the man, his performance, his work, or whether he is eligible for a raise, since I was the only one who proposed those increases.

Q. This was a procedure which you had in '56 before Local 66 came on the scene?

A. Yes; for many years.

Q. You kept on using that formula throughout?
A. That's right.

Mr. Raphael: You may inquire.

[fol. 561] Cross-examination.

By Mr. Weissman:

Q. Mr. Halpern, you testified that with respect to Wes Vaval you had given him an increase in July of 1957.
A. Two increases in July.
Q. Two increases in July?
A. That's right.
Q. I show you General Counsel's Exhibit 30-B, and refer you to the column No. 3 on the right-hand side of the page, and going down to Mr. Vaval's name, which is 27, and then [670] over to July, there appears to be how many increases in that month?
A. It is "X'd" out on top there. In the column you showed me, there is one increase, five dollars.
Q. With respect to Respondent's Exhibit 10 for identification which you identified, there appears to be initials on the left-hand side of the page. What does that represent?
A. The initials of the men that work in the listing department.
Q. On the top of the page you have what appears to be dates.
A. Right.
Q. You also have numbers in each box. Can you tell us what that represents?
A. The numbers or the dates?
Q. The numbers in the boxes.
A. The numbers represent the estimated hours produced by this man during this week. The date refers to the week.
Q. When you say "estimated hours," what do you mean exactly?
A. As I testified previously, every job was rated how many man hours it will take to list this job, so that I have a picture of my work load. Those hours were called estimated hours, like units. It is a standard engineering principle.
Q. Just so that I can understand you, we will take B. M.
[671] A. B. Moskowitz.

Q. The week of 12/31—what does this twenty represent exactly to you?

A. Twenty man hours of work he produced. That means [fol. 562] he had a job. It was rated twenty man hours and he finished it this week. It could be he started a new job in the middle of the week and it wasn't finished until the end. Therefore, the following week he has eighty. He probably finished it the following week.

Do you follow me?

Q. No, not exactly. I don't follow you.

A. This fellow in this column indicated that he finished during this week a job that was rated for twenty hours. He was credited with twenty hours production. He could have finished this job, for example, in the middle of the week, on a Wednesday, and he goes on the next job, which was a large job, which this seems to indicate, and this next job he finishes the following week. So his credit is carried over to the following week, which would be eighty.

Trial Examiner: In other words, you only put into each box the number of hours devoted to a job that was finished?

The Witness: For that particular week, correct.

Trial Examiner: Am I correct in assuming that these figures would have no meaning unless you carried them——

[672] The Witness: Three-monthly average. This is the three-monthly average, in the column marked "R", because otherwise it wouldn't have no meaning. I wouldn't know what his batting average is. Each man has his rating here.

By Mr. Weissman:

Q. With respect to this rating, was it based on any particular norm?

A. Yes. We had a certain key by which we rate the jobs: complexity, how many schedule sheets, how many detail sheets on the drawing, the type of hardware schedule, and the working schedule, the horizontal schedule, the type of locks or hinges. It is procedure.

Q. What does "S" represent?

A. Small orders. We have small orders to process, let us say, one door or one frame. No hours are given.

[fol. 563] Q. You have various numbers under the word "R" here in a column.

A. "Rating."

Q. If B. M. has a rating of forty-five, is that based on a norm of one-hundred?

A. This means that during the three-month period shown on the sheet, his average weekly production was forty-five estimated hours.

Q. How can you determine from that whether an individual is doing his work properly or not?

A. If his average weekly production is twenty-one hours or [673] thirty-one, that means he is producing so many hours a week less than the other guy.

Q. You mean you do this on a curve?

A. Not on curves. A straight comparison.

Q. In other words, you have no figure that says one hundred is perfect. You take all the figures you make up and then you put them on a curve and you determine which employee is working better than another employee?

A. I don't put it on any curve. I say the average of all the men in the department is, let us say, thirty-three hours, the estimated hours production per week, which is about what it runs, I guess. I don't remember. Wes Vaval is twenty-five hours. He is below average. Then I talk to the man. Sometimes he improves and sometimes he doesn't.

Q. With respect to this average, this would involve a three-month period.

A. Starting with the week of 12/31.

Q. Yes. I assume that Wes Vaval is the "W. V." on the left-hand side?

A. Correct.

Q. You have someone who only produced twenty-one hours. It seems to be "L. L." in reverse?

A. No; Jimmy Johnstone, "J. J." Look how he advanced and how much Vaval didn't.

Q. Mr. Halpern, your average for Johnstone is twenty-one?

[674] A. In 1956.

Mr. Weissman: Mr. Examiner, at this point I am be-[fol. 564] ginning to question the basis for this type of testimony which Mr. Raphael has introduced. I don't know

whether we are attempting to determine whether Wes Vaval was discharged for cause or for union activieis.

Trial Examiner: They haven't been offered yet, incidentally.

Mr. Raphael: I haven't offered these exhibits. I just used them to refresh the witness's recollection.

If you want to offer them, Mr. Weissman, I will have no objection to them.

Mr. Weissman: Thank you very much, but I don't intend to offer them.

By Mr. Weissman:

Q. Mr. Halpern, you testified that around July of 1957 you had a discussion with Mr. Vaval in which he asked you for an increase and then you granted it to him. Is that correct?

A. Yes; two increases.

Q. Two increases?

A. Yes.

Q. At the time that Mr. Vaval requested this increase, which you said you granted to him, could you tell us from these notes what his rating was?

A. Right here. On this sheet you see Wes Vaval was rated [675] "3", small orders. On 8/5 he was shifted into regular rated hours. It starts right here. Right after we had the discussion and he got his second raise on 7/29, he was shifted.

Q. Again I ask you the same question: What was his rating, his overall rating, at that time?

A. Small order lister.

Q. What is the number that you have over here on the left-hand side?

A. Nineteen.

Q. Is that the smallest amount of any employee at that time?

A. No.

Q. Let us start from the top, Mr. Halpern. The first "B. M." is 35.4.

A. Right.

Q. The next man 29?

A. Right.

Q. The next man is 27.3?

A. Right.
Q. The next man is 44?
A. Right.
[fol. 565] Q. The next man is 27?
A. Right.
Q. The next man is 24?
A. Right.
Q. The next man is 27?
[676] A. Right.
Q. Vaval 19?
A. Right.
Q. The next man is 34.3?
A. Right.
Q. The next man is 27?
A. Right.
Q. The next man is 26?
A. Right.
Q. The next man is 26?
A. Right.
Q. The next two men are "H. P." What is that?
A. Hardware preparation. They were the lowest. They, like Vaval, didn't do any listing for the better part of that period.

Trial Examiner: Would you mind telling me in detail what listing is?

The Witness: When the drawing is finished, the detail is submitted for approval to an architect. When it is returned approved, it is processed for manufacturing. A lister is a processer. He takes the drawing. He takes out all the information the factory doesn't need, like wall conditions or other miscellaneous locations, and sends down a shop order that pertains strictly to the profile or the design of the frame, door, or whatever the product may be. [677] This processing is called listing.

Mr. Raphael: Explaining it simply, it is a means of channeling or translating for factory purposes the blueprint drawing so they are intelligible to the average guy in the plant.

The Witness: Correct.

Mr. Raphael: It is an over-simplification of the drawings. That is what it amounts to.

By Mr. Weissman:

Q. Just one other question. I showed you this exhibit and I saw that on the exhibit in July it is marked that Mr. Vaval got a five-dollar increase.

Trial Examiner: You are referring to 30-A?

[fol. 566] Mr. Weissman: I am referring to Exhibit 30-B.

Mr. Raphael: We say, Mr. Weissman, that——

Mr. Weissman: Just one moment.

Mr. Raphael: I don't agree with you. We say it shows two increases.

Trial Examiner: Finish the question.

By Mr. Weissman:

Q. Is it still your position that Mr. Vaval received two increases in July?

A. Yes, sir.

Mr. Weissman: I have no further questions.

Mr. Raphael: Neither have I. I think the paper will speak for itself.

(Witness excused.)

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[678] Alfred Finkel resumed as a witness for and on behalf of the Respondent, and having been previously duly sworn, was examined and testified further as follows:

Direct examination. (Cont'd)

By Mr. Raphael:

Q. I think that when we recessed we were speaking about the meeting of October 18th, 1958, with Mr. Raimist and the others. Would you tell us about that, please?

A. This was a meeting held at Mr. Raphael's office. The following people were present: On behalf of the association, Sam Mittleman, Sam Sears, Alfred Finkel, Arthur Graine.

Mr. Weissman: Mr. Examiner, I have difficulty in keeping up with the witness's testimony at times because he

goes too fast. I would appreciate it if he would slow up a little bit so I could keep notes.

Trial Examiner: Especially when you mention names and figures.

The Witness: All right.

[fol. 567] Mr. Weissman: The other point I want to make is that it has been my observation up to now that the witness has been reading verbatim from his notes.

Mr. Raphael: You are wrong. I take issue with your statement.

Mr. Weissman: I think the witness should be informed [679] that he should read the notes and testify from his memory.

Mr. Raphael: He is doing just that, Mr. Trial Examiner. I have been following that very closely.

Trial Examiner: Proceed.

A. At the October 18th 1956 meeting, which took place in Mr. Raphael's office, present on behalf of th Hollow Metal Buck and Door Association were: S. K. Mittleman, Sam Sears, Alfred Finkel, Arthur Graine. I am omitting the companies that they belong to in order to accelerate this.

Trial Examiner: They have been identified before.

The Witness: Kay, who is the union representative from Superior; Folly, who was the union representative from Pioneer——

Mr. Weissman: Mr. Examiner, once more, I would like to know whether these people are employees or whether they are representatives. I would like him to be more explicit with respect to who they are, because I don't know what he is talking about.

Trial Examiner: He said they were representing employees.

Mr. Raphael: I thought he said that.

Mr. Weissman: Are these employees?

Trial Examiner: Not all of them. I think the last two. [fol. 568] The Witness: The last two are employees who were representatives of the employees at these union meetings.

Sidney Appel, the Williamsburg union representative; [680] Mr. Raimist; Osiniski, who is the World union rep-

resentative; Mr. Raphael; and also Henry Carr, a principal of Aetna Steel.

We started to go over the July 19th proposals all over again. We tried to get it down—we tried to get a little closer meeting of the minds. We went through the items I repeated before.

We went through the recognition, the forty-hour, holidays, two and-a-half times, minimum——

Mr. Weissman: I can't keep up with him.

The Witness: I am going so rapidly because we covered these items in the prior meetings. I have it on record that we discussed this before. I am purposely trying to finish here as rapidly as possible.

Mr. Weissman: If you are going to discuss specifics, I want to have an opportunity to copy it down. If you can slow down, I would appreciate it.

The Witness: I will try it.

We started from the July 19th letter again of A and B, which was the recognition clause and the union shop, and the working week. This was the first meeting that we went into the items of job classifications, minimum rates and merit increases. This was the first attempt that we have had as against the two or three prior meetings.

We were trying to find out just exactly what the unit [661] consists of. What are we talking about? How do we classify these men? Let's all talk about the same thing, which was something we were trying to convey to Mr. Raimist what we thought our classifications were. Let him try to understand our problem and then he would come back and tell us how to work this out. In [fol. 569] other words, we wanted to understand what we were talking about.

Mr. Weissman: Mr. Examiner, could the witness please be confined to discussion? He keeps going off in his own viewpoint and subjective opinions.

The Witness: This is exactly what took place.

Mr. Raphael: This was discussed at the meeting.

The Witness: This was discussed at the meeting.

Mr. Weissman: That is not the way it sounded when you testified.

The Witness: At that meeting we started to talk about

classification. Then we brought up the question how do we start. Well, we will start with an apprentice, we will start with a junior, we will start with an intermediate, we will start with a senior second class and a senior first class.

We were trying to say what is an apprentice, what is a junior and what is an intermediate, what is a senior, how do we classify him, what makes a junior, what makes an apprentice; let's try to find out what we are talking about.

[682] We said maybe we ought to have meetings subsequent to this and get a meeting of minds on that, which actually took place. I believe we attempted to have a meeting with Mr. Raimist some time in November about let's determine what classifications are, what is a junior, what is an intermediate, and right down the line.

We also spoke that management would like the prerogative to move from one classification to another, that there would be a three-month probationary period for all men.

Then we moved on to the question of the length of the contract.

Mr. Weissman: Mr. Examiner, with respect to the witness's statement that management wanted the prerogative [fol. 570] of moving from one class to the other, I don't think it is responsive. I don't understand what he means.

Mr. Raphael: That was part of the discussion.

The Witness: It was part of the discussion. We spoke of apprentice, junior, intermediate and senior. We also said that we would like the right to move, to determine when a man becomes a junior, when a man becomes an intermediate, and when he becomes a senior.

Trial Examiner: Proceed.

If you need any clarification, you may cross examine when the direct examination is concluded.

The Witness: Then we discussed the length of the [683] contract. We discussed the three-year contract, with progressive increases during the three years.

Trial Examiner: What was the position of the two sides?

The Witness: It was held in abeyance. There was no commitment one way or the other. There was nothing definite on it.

By Mr. Raphael:

Q. Was there some discussion about adjustments every six months, three dollars a week?

A. Yes.

Q. Would you tell us about that?

A. In the discussion with regard to the apprentices, we felt that there should be an automatic increase in the apprentice range of three dollars every six months, while the man was still in the apprentice range. That would be an automatic increase.

Q. Was there a discussion about a probation period?

A. I mentioned that before, that there would be a three-month probationary period for all the men.

Q. Did you discuss rates of pay? Did you discuss minimums and maximums for the brackets that you have talked about?

A. We were trying to somehow come up with dollars and where this comes into dollars.

[fol. 571] Q. The discussion proceeded within what area? For instance, was there a bracket discussed for apprentices, for juniors, for intermediates, for seniors?

[684] A. Brackets were discussed.

Q. What were the minimums and maximums?

A. Fifty dollars to sixty dollars for an apprentice.

Trial Examiner: Whose proposal was that, or was that agreed upon?

The Witness: I will tell you exactly what happened, because I remember it clearly.

There were discussions from fifty to sixty for apprentices, sixty to seventy-five for juniors, seventy-five to ninety for intermediates, ninety to one hundred for senior second class, one hundred to one-hundred-twenty for senior first class, based on a forty-hour week.

Mr. Raimist, I recall, very vigorously objected to maximums. He said he will go for minimums, but never maximums. We let the matter drop until the next time. He said he will never agree to a maximum range on any person.

Then we discussed the length of the contract, which I pointed out before, and we offered progressive increases during the three-year contract.

The question of holidays was again discussed; the vacations, the same formula as mentioned before—one week

for twelve months and two weeks for two years, and then the progression from eight to fifteen over the twelve-year period.

Then we got into sick leave. We still kept our same offer: one day for each year of service up to five days; [685] five-day maximum; agreed to recognize present term of employment. That was an item that Mr. Raimist wanted, that we don't start from the contract date, but we start whenever we sign. If the man was there five years, he doesn't start at a one-year position.

[fol. 572] Again we discussed the bulletin board, no controversial subjects, to be approved by management.

Again we discussed no strike, no lock-out. We agreed on that, but we did not agree to the no lawsuits.

We agreed that we would not sublet or transfer work to deprive union men of work, but the union must recognize the branch or the agencies that are doing detailing.

We then discussed the establishment of an apprentice training program, which was in conjunction with the items I mentioned before, as far as the classifications.

We discussed the fact that the shop steward was to collect dues at specific times. We went over that again.

With regard to arbitration, we said we would set up a procedure on that.

The conflict of statutes was okay.

That finished the letter that we had discussed. Then Mr. Raimist started telling us exactly what he wants. He said he insists on a union shop and a union seal. He said he may agree on the work week. This was a change in his position, because before he had agreed on it and he gave us [686] to understand he probably would hold it back for bartering, which was all right.

He said he was not too happy with this classification. He was against classification. He wanted merit increases and merit review and a formula.

Trial Examiner: You mean he was against all classifications? What did he say about that?

The Witness: To be very candid, I felt that his position was, anything he was not one hundred percent positive, he would be against until he knew exactly what he was talking about, and on this item of classifications, I don't think he ever found out what he really wanted or what the nature of our business was with regard to classi-

fication. I don't know why the man didn't make it his business to find out exactly what our engineering department consisted of. When I talk of "our," I mean the industry.

[fol. 573] He might have been familiar with the engineering department of—the only thing I heard of at these meetings was Foster Wheeler and Bethlehem Steel. That happens to be a unique industry. Our draftsmen are even more unique than our industry. We make doors and frames, which is a complete specialty.

Trial Examiner: What I want to know is this: You said he was opposed to classification. What did he say that led you to come to that conclusion?

[687] The Witness: I just know that I wrote down that his point number four at that meeting was that he was again classification.

Trial Examiner: You don't recall what it was he said in that respect?

The Witness: As you will see later on, over the pattern, he didn't understand classification. We made attempts to get a classification.

Trial Examiner: What I want to know is this: I got the impression when you said he was opposed to classification that he meant he wanted no classification of employees at all. That is the impression I get from the way you summarized his position.

The Witness: Maybe he didn't want classification as we might have discussed it at the earlier part of the meeting. Let me put it that way.

He said he also insisted upon merit increases. I think I mentioned that before. He wanted his holidays; he wanted his vacations, two weeks for one year; and seniority, which would be an absolute must for Mr. Raimist. He wanted a promotional clause subject to grievances. He wanted a discharge clause. He wanted a notice of lay-off —one week notice, one year; two weeks, two years.

Then he finally made his first concession. "Raimist offers to eliminate pension; just wants welfare."

[688] He spoke in terms of a contract, that he said he really wants one year, but maybe he will give us two years.

[fol. 574] We then continued to talk about a two-year contract with a five-dollar offer now, a general offer now, and five dollars in the second year.

We spoke about the eight holidays, the one percent welfare now, one and-a-half percent in one year, and two percent in eighteen months. We then increased our welfare fund offer of prior meetings.

By Mr. Newmark:

Q. Does that exhaust your recollection of what happened at the October 18th meeting?

A. Pretty much so.

Q. Let us proceed to the next meeting. What date was that?

A. The next meeting was held October 24, 1956. Present on behalf of the Hollow Metal Door and Buck Association——

Q. Tell us what happened at the October 24th meeting.

A. Present on behalf of the Hollow Metal Door and Buck Association were Sam Mittleman, Sam Sears, Sidney Raphael, Alfred Finkel, Irving Shaffer, Arthur Graine. Present on behalf of the union were Mr. Raimist; Sidney Appel, the Williamsburg union representative; Osiniski, of the World Steel, union representative; Folly, of the Pioneer union representative; Kay, the Superior union representative, and Zimmerman, the Aetna representative.

Trial Examiner: I notice you talked about the World [689] Steel Company. Earlier you talked about the World Union. You mean the union representative of the World Steel?

The Witness: That's right.

By Mr. Raphael:

Q. While we were on the subject, I recall during the testimony of Mr. Raimist, when he was questioned by Mr. Weissman, he testified about a meeting on October 18th, and the next meeting he was asked to testify about was a meeting of November 1st, 1956. However, he did not testify about a meeting of October 24th. I don't have that in the transcript.

[fol. 575] Is it your testimony here now that there was a meeting in between October 18th and November 1st?

A. There was.

Mr. Weissman: We will concede there was a meeting on October 24th.

The Witness: We were there until one o'clock in the morning.

By Mr. Raphael:

Q. There was no testimony given by counsel to that effect.

A. I remember that meeting very vividly, because at one o'clock in the morning——

Q. I just want to be sure.

A. It was my birthday and you brought out a bottle of Scotch.

Mr. Raimist: I didn't have any.

The Witness: Yes, you did.

[690] I gave you the names of those who were present.

The meeting started at seven p.m. At this meeting we spent most of our time discussing the items of classification. We had in all the prior meetings gone over all the other items and now we were trying to nail down specific items that we did not have an understanding on.

This meeting was devoted entirely to the question of classification, automatic progression system, training, apprentice, the question of moving apprentice into junior as an automatic item, the question of moving juniors into intermediates, the question of evaluation of the classification, how long a proper period for a man to stay as an apprentice, how long is a junior.

There was a great deal of discussion back and forth on that. Mr. Raimist felt that two years would be sufficient. I think that was finally agreed on. Yes. It was agreed on that two years would be the apprenticeship and three years would be the junior. Then after you go from Junior on the evaluation would depend on the employer.

[fol. 576] Mr. Raimist again stated his position on minimum rates in each classification.

Then there was a discussion on the four classifications: apprentice, junior, senior, senior specialist. At this meeting we were changing the classification. Originally, I think, we spoke of apprentice, junior, intermediate, senior [691] first class, senior second class. At this time we were talking of apprentice, junior, senior, and senior specialist.

We spoke about whether there should be automatic in-

creases in the first classification, the second classification, whether it should include the first and the second classification, to be on an automatic basis, and then after that the man is on his own as to the proper evaluation by the company.

While I have given you this in a few minutes, this meeting I remember very candidly ran to almost one o'clock in the morning, and why I am so positive of it is that it started to be held on October 24th, 1956 and at one o'clock it was October 25th, 1956, and I said that this is my birthday, October 25th, and let's break it up, it is one o'clock, and we broke up around one o'clock in the morning.

By Mr. Newmark:

Q. Does that conclude your testimony with respect to the October 24th meeting?

A. That's right.

Q. When was the next meeting, if any?

A. November 1st.

Q. Where was that held?

A. In Mr. Raphael's office.

Q. Tell us what happened and who was present.

A. This meeting was held at Mr. Raphael's office. It also was an evening meeting, as requested by Mr. Raimist, because [692] he didn't want the men to be missing time from their day, that they were losing pay by coming down to meetings.

[fol. 577] I don't know who was supposed to pay them at the time, but Mr. Raimist requested that we start meeting at night, and we met on October 24th and we continued on November 1st.

Present at the meeting were Mr. Raimist, representing the union; Mr. Raphael, representing the employers; Mr. Mittleman, Mr. Graine, Mr. Finkel, representing the employers. Representing the union were Osiniski, who was the World union representative; Zimmerman, who was the Aetna union representative; Appel, who was the Williamsburg union representative; Kay, who was the Superior union representatvie; and Folly, who was the Pioneer union representative.

At this meeting Mr. Raimist said that he insisted that

we make him an offer, make him some sort of a package offer. He said we had gone through enough preliminary meetings. He insisted upon a package offer.

We then went next door, all the employer representativer, and batted around a package that we were prepared to offer at the time.

We came back and we started to offer the package and Mr. Raimist refused to even listen to the package. He said, "Don't even tell me what it is. I am not interested in hearing what it is." He just refused to listen to the package. His reason at the time was because we were offering him an [693] overall package and he did not want to have an overall package at that time. He just wanted a package with regard to everything else other than dollars.

We were offering it in conjunction with everything—welfare, vacation, holidays, right down the line—because we thought that was what he wanted.

He said, "Don't even tell me the package. I don't want to hear it. If it is going to have all this in it, I don't want to have anything to do with it." He refused to listen to it.

[fol. 578] We were really at a dilemma, because this package took us about an hour to really come to a meeting of the minds among ourselves as to what we wanted to offer him. At that time we thought, well if that was his objection, we went back and we said we will negotiate on an individual shop basis for wages, and then we will go back to the balance of the agreement on an association basis.

"If that was your objection and you refuse to even listen to our package," we felt the least he could have done is have the courtesy of listening to us and then refusing the——

Mr. Weissman: I object.

The Witness: Please. This was discussed at the time.

We came back to the second caucus and we said, "Gee, the guy doesn't even listen to anything."

[694] Mr. Weissman: Was this stated at the caucus?

The Witness: At our second caucus.

Mr. Weissman: I move that this be struck.

Mr. Raphael: This is with Raimist.

Trial Examiner: With the caucus, I assume you mean with the employers.

The Witness: The employers went back and said, "You don't even bother to listen, to give us the courtesy"——

Trial Examiner: When you said "caucus," you were talking about the employers' meeting?

The Witness: The employers went back——

Trial Examiner: No. I got the impression this was said at the caucus meeting.

The Witness: It was discussed at the caucus meeting and it was repeated to Mr. Raimist.

Trial Examiner: Tell us what was said at the conference with the union representatives.

The Witness: We told him we felt he wasn't even courteous by even listening to the package. He completely [fol. 579] threw us out of balance. I remember this very clearly. We told him, "Why don't you at least listen and then turn us down? Why do you even refuse to listen?" We said, "As long as you feel that way, we will negotiate on an individual shop basis on wages," and then we will have everything uniform.

Trial Examiner: I would like you to tell me what he [695] first said when you talked to him about an overall package.

The Witness: He refused to listen.

Trial Examiner: What did he say?

The Witness: We went in. These were my notes on what we were going to offer him. He said, "What does this consist of?"

We said that it consists of wages—this was a package offer, consisting of wages, holidays and welfare. We wanted to put this into a cents-per-hour offer. He refused.

Trial Examiner: What did he say?

The Witness: He refused to listen to it.

By Mr. Newmark:

Q. What did he say?

A. He said he would not listen to it, that he will not discuss wages, holidays and welfare as a package deal. The only thing he wants to hear from us in a package deal with regard to everything but wages.

Trial Examiner: Everything but wages?

The Witness: But wages. The wages he wanted on an individual shop basis.

We then went back, as I described it, and we had the second meeting, and we told him as long as he feels that way we will have to go along with what he wants, that we will negotiate on an individual shop basis for wages and we will come back and tie up the rest of the contract on a uniform industry-wide basis. Other than money, everything else was [696] to be uniform.

[fol. 580] Trial Examiner: In other words, was it your understanding, then, that you were to go and start negotiating wages on an individual basis and then return to the remainder of the money items?

The Witness: This is what we had offered him. I wrote down, "We offered to negotiate on individual shop basis *re* wages, then go back to balance of agreement."

By Mr. Newmark:

Q. How did you leave that meeting? What was the understanding, if any?

A. We were going to continue to negotiate, but we were going to move apart. He wanted us to talk about wages separately and the balance of the contract on an association-wide basis. That was our understanding.

Trial Examiner: And you agreed?

The Witness: We offered that.

By Mr. Newmark:

Q. So that both sides were agreed to that plan?

A. Yes.

Trial Examiner: Let us take a five-minute recess.

(Recess taken.)

Trial Examiner: The proceeding will be in order.

By Mr. Raphael:

Q. What happened after the November 1st meeting?

A. In the meanwhile, we got a notice that there was an [697] unfair labor practice charge filed against Wil-

liamsburg by the Architectural Engineering Guild, Local 66. This was sent out by the National Labor Relations Board on October 23, 1956.

Mr. Weissman: I don't know what the relevancy is.

By Mr. Raphael:

[fol. 581] Q. That case was subsequently withdrawn by the Board?

A. The charge was withdrawn, yes.

Q. Then we have testimony here about a meeting that was held on, I believe, November 7th, between Mr. Halpern, Mr. Raimist and Mr. Appel, at my office, to discuss classification.

A. That was on the 15th. After that last meeting of November 1st, in which we offered to negotiate on an individual shop basis——

Q. Did we have a meeting on November 7th?

Mr. Newmark: 14th.

Trial Examiner: When was the next meeting after November 1st?

The Witness: I believe there were meetings held by the heads of the drafting rooms. We were getting no where with regard to classification.

Trial Examiner: Wait. I take it your question was directed to meetings between the employers and the employees' representatives.

[698] Mr. Raphael: Yes.

The Witness: I was not present at the November meetings that took place, but I believe that—well, when we came back from the November 1st meeting, I informed Halpern that we have to get together on an understanding of classifications. "You contact the heads of the other drafting room, make your own arrangements with Mr. Raimist, and come to some sort of meeting of the minds among yourselves as to what the classifications were," because he was not happy with the classifications.

Trial Examiner: When was this instruction given to Mr. Halpern?

The Witness: The day after I came back.

Trial Examiner: The November 1st meeting?

The Witness: November 2nd, perhaps.

By Mr. Raphael:

[fol. 582] Q. So in pursuance of those instructions there was a meeting later held at which Halpern attended?

A. Yes.

Q. Mr. Halpern already testified about that meeting, and there was offered in evidence an exhibit about classifications that were proposed by Mr. Halpern.

A. That's right.

Q. I don't intend to belabor the record with that. You are familiar with that?

A. I know he had meetings with the other heads and I know [699] he had meeting with Mr. Raimist.

Mr. Weissman: This is all hearsay. I object to these questions and answers.

Trial Examiner: As I take it, you are interrogating this witness about the meetings he attended between the representatives of the employers and representatives of the employees.

Mr. Raphael: There is also in evidence here as Respondent's Exhibit No. 6 a list of classifications that Halpern testified to.

Trial Examiner: It was received.

By Mr. Raphael:

Q. Are you familiar with this list?

A. Yes.

Q. Did you review this with Mr. Halpern before he went to the meeting?

A. Yes.

Q. After the meeting, Mr. Halpern came back and reported to you; is that right?

A. That's right.

Q. After that report that Mr. Halpern gave you of his meeting in mid-November about these classifications, did you thereafter have a meeting between employers and representatives of the union, and when did you have such meeting and where did you have it?

A. Halpern came back and told me that this man is impossible.

[700] Q. Forget about that.

[fol. 583] Mr. Weissman: Mr. Examiner, I am going to ask that that be stricken.

Furthermore, I am going to request that Mr. Raphael and the witness slow down so that we can operate properly here. I haven't been able to follow his answers because he is going much too quickly.

Trial Examiner: The last remark may be stricken.

Proceed.

Frankly, I don't think he is going more than at a normal pace than any witness.

The Witness: Mr. Examiner, I am very anxious to complete today. I might appear to be more rapid, but I don't mean it intentionally or to slow you up in any manner whatsoever. I would like to finish with my testimony.

Trial Examiner: Go ahead.

The Witness: The next meeting was held December 5th, 1956, two P. M., at the State Mediation Board. Present at this meeting was Mr. Zimmerman, the Aetna union representative; Mr. Appel——

Trial Examiner: You gave them to us before. Just give us the names.

The Witness: Zimmerman, Appel, Kay, Osiniski, Raimist, Folly. On behalf of the association were Sam Sheer, Sam Mittleman, Sidney Raphael, Arthur Graine, Alfred Finkel. At this meeting Mr. Gamser introduced himself and told us that [701] he was asked to step into the picture and try to help us come to a contract.

By Mr. Raphael:

Q. Who is Mr. Gamser? He is of the State Mediation Board?

A. He is the assigned mediator by the New York State Board of Mediation.

Q. You met in the office of the State Board of Mediation?

A. That's right. We met there two o'clock in the afternoon.

Q. What transpired?

A. I don't think very much transpired, because as I re- [fol. 584] call, Mr. Carr from Aetna was also up there on a mediation and Gamser pretty much dismissed this pretty rapidly because he wanted, I think, to swing over——

Trial Examiner: Well, you don't have to give us that.
The Witness: It was just a preliminary meeting.
Trial Examiner: Proceed.

By Mr. Raphael:

Q. Was there any discussion at all at that time in December, or was it just a pro forma meeting?

A. It was pro forma meeting. He told us he was on the case.

Q. When did you meet again after that, industry and labor?

A. March 29th.

Q. That was your next meeting?

A. That's right.

[702] Q. In between the meeting in December of 1956 at the State Mediation Board and the time you held your next meeting at the State Mediation Board, which was Mach 29th, 1957, during that interval there was testimony in the case about Local 66 sending a letter to Williamsburg Steel dated January 26, 1957, which is General Counsel's Exhibit No. 20, which pertained to the complaint about giving out listing work.

Are you familiar with that?

A. I am.

Q. There is testimony in the case that a letter was written by our office, Raphael's office, replying to that letter of January 26th, 1957 on the date of February 5th, 1957.

Are you familiar with that?

A. Yes, I am.

Q. Can you briefly tell the Trial Examiner what that issue was about?

Mr. Wasserman: Mr. Examiner, when I put this letter in, as you will recall, I stated it was just for the purpose that there had been notice, that the union had sent a letter to the company in January. It had nothing to do with actual contents.

[fol. 585] As a matter of fact, I think we stated it didn't necessarily involve any of the merits of the case, the contents of the letter, except that a letter had been sent [703] and a letter received from Mr. Raphael.

Mr. Raphael: You mean a letter to us indicating where the union was? What was the purpose of the letter?

Trial Examiner: Don't the letters speak for themselves?

Mr. Raphael: Sure they do. They are in evidence. I want him to explain what that issue was.

Trial Examiner: May I see the letters?

Mr. Raphael: Sure. They are Exhibits 20 and 21.

(Short pause.)

Mr. Weissman: Mr. Examiner, I refer to Page 65, which concerns Exhibit 20 for identification, and the statement which was made on an objection by Mr. Raphael.

Trial Examiner: Frankly, I think that is going to interject a new issue into the case which General Counsel disavows.

Mr. Raphael: If he disavows it, I will withdraw my question.

By Mr. Raphael:

Q. There have been introduced in evidence here in the examination of Mr. Raimist the following letters. A letter dated March 15th, 1957, from Local 66 to Williamsburg, with respect to sick leave, with an issue of sick leave; a reply thereto dated the 16th of March, 1957——

Trial Examiner: Exhibits 16 and 17?

Mr. Raphael: That is right.

By Mr. Raphael:

Q. —and a third letter, of March 21, [704] 1957, from Local 66 to Williamsburg, Exhibit 18; and a letter of March 22nd, 1957, from Williamsburg to Local 66, replying to [fol. 586] Local 66's letter of March 21st, which is Exhibit No. 19, all relating to sick leave.

Do you have those copies in front of you?

A. Yes, I do.

Q. Can you tell us what you know about that particular issue?

Mr. Weissman: Mr. Examiner, this question is rather broad.

Mr. Raphael: Sure it is broad. I am trying to save time. I can ask pinpoint questions.

Trial Examiner: I think that was in connection with a bargainable issue. He may answer the question.

A. In order to properly answer the question, I will have to give you a background on this whole question of sick leave. Sick leave was started by myself going back to January 6th, 1948. The purpose of sick leave was to get some sort of uniform system of protecting people who were sick.

Mr. Weissman: Mr. Examiner, there are three documents in evidence with respect to sick leave and they speak for themselves.

Mr. Raphael: But you have to have the background. You are charging this company with changing something. We want to prove they changed nothing.

[705] Mr. Weissman: If they want to testify to something other than what is in those documents, I have no objection.

Trial Examiner: I don't know whether he is going out side the documents or not, but it sounded as though what he was talking about was material with respect to the subject.

Mr. Raphael: That is right.

Trial Examiner: Proceed.

[fol. 587] A. In 1948 we started the policy of sick leave. At the beginning, while we had few employees, relatively few employees at the time, it wasn't much of a problem. But starting in the middle fifties, 1953 and 1954, the thing starting becoming out of hand.

It came out of hand primarily because of women who just were part-timers, such as typists and stenographers. They decided it was coming to them. It spread all over the office. There were some men and female employees which this policy covered who would have their menstrual period, whether it was a male or female.

Q. You mean there was no respect for biology at all?

A. This question of trying to improve attendance was a constant one. We were perfectly willing to pay for the sick leave, providing they came in. If the men were sick or the girls were sick, fine.

I also want to point out at this time that when sick leave was started, there was always more clerical help [706] involved than there were drafting help. At the inception we

probably had eight or nine or six draftsmen and we might have had twenty bookkeepers, stenographers, telephone operators and clerks around. In fact, right up to date the portion of the clerical, or let us refer to them as office employees, were always greater than the engineering unit.

In 1957 you probably had fifty men in the unit and you might have had seventy or eighty outside the unit that were covered by this sick leave policy. We didn't show any discrimination between one or the other. This was something that had to be applied to everybody in the office.

We were always faced with this problem of abuse with the sick leave and trying to improve the sick leave. Finally, on March 28th 1955, we started the policy of bringing forward unused sick leave.

Q. Accumulating it, you mean?

A. We only accumulated one-half and we paid the other half. I think that is clear.

[fol. 588] Q. Can you illustrate it?

A. If a man was out two days during the year and he had eight days left to his credit, we would carry forward four days and we would pay him for four days right after the end of the year.

Trial Examiner: I don't get that. Would you repeat that?

[707] The Witness: If a man had used two days out of ten days, he had eight, we paid him for four and we accumulated four.

The main purpose of this new policy was an additional incentive for the improved attendance and to eliminate more of the non-attenders to become attenders. Historically, we saw there were some men, very few, and some women, very few, who never took any time off, and there were some who just took it off every single month. They wouldn't even give themselves the privilege of accumulating one or two days. They just took each month off.

That continued. On May 17th, 1956, we made another revision on this sick leave policy, with a notice to the engineering and office personnel, in which we made an additional amendment, that when you accumulate the twenty days, the twenty-day accumulation that we had agreed on before, that we would pay them for the excess of twenty days.

That is pretty much the sum of the May 17th, 1956 notice. Some people were accumulating it up the twenty days and they said, "What happens to us now?"

We said, "We will pay you for the time. Just continue not abusing the privilege."

This still was not doing it with everybody. It was just helping one or two or three who were the major accumulators. We still were not stopping the office and the drafting room [708] of this absenteeism that we had. We thought it over and we thought it over. We thought that we would have to come into another method.

[fol. 589] This was the March 11, 1957 method. This is how we proceeded on that. We said everything else is going to continue. Fine. But we are going to give a man ten days, the same ten days he had before. We are not going to call it ten days; we are going to call it five days.

Mr. Weissman: Mr. Examiner, at this time there is in evidence the March 11th change. I am going to object to any further testimony with respect to that change.

Mr. Raphael: He has a right to explain it.

The Witness: I am just clarifying it. It is very clear.

Mr. Weissman: Mr. Examiner, the document speaks for itself.

Trial Examiner: If the exhibit fully explains the system, I really don't see any need for an argument on it.

Mr. Raphael: I think he has something to add to that exhibit. There is something he wants to say.

The Witness: The only thing I want to point out to you is, the contention was, I reduced the sick leave. I did not reduce the sick leave.

Mr. Weissman: Mr. Examiner, again this is his viewpoint of what he did.

Mr. Raphael: This is the rational.

[709] Trial Examiner: Apparently there was an agreement at the time that exhibit was offered that that was the new plan that was installed on that date. If that is true, I see no need to enlarge it by oral testimony.

The Witness: If it is clear to you, all right.

By Mr. Raphael:

Q. Mr. Finkel, by inaugurating this policy of March 11th, [fol. 590] 1957, was there any reduction in the sick leave benefits that had theretofore obtained in favor of the people in the white collar unit of your company?

Mr. Weissman: I object to that. Those documents speak for themselves. They specify exactly how many days an employee is to receive exactly with respect to accumulation.

Trial Examiner: What exhibit is that?

The Witness: General Counsel's Exhibit 31.

Mr. Raphael: We have a right to explain that. You can —take a thing cold.

Trial Examiner: It looks to me like it is a complete announcement of a plan. Unless it was changed, it seems to me that was it.

The Witness: That was it.

Mr. Raphael: The only question I want to clear the record on is this: If the Board has taken a position, we are trying to interpret one policy as against another. We have to be realistic. We are all over twenty-one years of age. You cannot read a thing cold. I have tried a lot of [710] cases.

Trial Examiner: There is such a thing as the parol evidence rule.

Mr. Raphael: Not on this. There is a parol evidence rule if you have an agreement with somebody, yes. You cannot vary the agreement. There is no agreement here.

Trial Examiner: A written announcement was made to the employees as to the sick leave.

Mr. Raphael: That is right. I want to prove there was no difference or change with respect to this and the old policy.

Trial Examiner: He already described the old policy. It is up to me to decide whether there is a difference in the new one and in what respect.

[fol. 591] Objection sustained.

By Mr. Raphael:

Q. As a matter of practical operation, was there any difference in benefits as between the plan that preceded March, 1957 and the March, 1957 plan?

Mr. Weissman: Objection for the same reason, Mr. Examiner.

Trial Examiner: Sustained.

Mr. Raphael: I don't understand that. It is Greek to me.

Mr. Newmark: This is our direct case.

Mr. Raphael: It is our case.

[711] Trial Examiner: The witness has said that the new plan is contained in that memorandum.

Mr. Raphael: But there is a change made here that we did something to change something and I intend to prove that we changed nothing.

Trial Examiner: You have oral testimony as to what the plan was before. Now you have written testimony as to what the new plan is.

Mr. Raphael: Somebody reading this record is going to draw inferences not based on the evidence. I am trying to bring in evidence to show what the true facts are.

Trial Examiner: If there wasn't any change, the exhibit will reflect it.

Let us move on.

By Mr. Raphael:

Q. I would like to compare this plan in contrast to the plan that preceded it. Take it up point by point.

Mr. Raphael: I will do it some other way.

Trial Examiner: I don't think I will permit you to do that, Mr. Raphael. I haven't any doubt about it at all in my mind. If I did, I would allow you to go ahead even [fol. 592] though it might take a little more time. Here you have his testimony as to what the plan was before. You have the written agreement. It is up to me to decide whether there was a change.

Mr. Raphael: Our claim is there was no change.

[712] Trial Examiner: Maybe there isn't. I am not saying there was.

Mr. Raphael: All right.

By Mr. Raphael:

Q. After the plan of March 11th, 1957 was announced, were the people in the white collar unit accorded ten days of sick leave?

Mr. Weissman: I object for two reasons: First of all, the white collar unit is something I have not heard of before. Secondly, I object for the same reasons I objected before.

Trial Examiner: Sustained.

It doesn't make any difference whether they were actually given that or not. That is not part of this case, as to whether people were or were not given more or less sick leave. The only question is whether there were changes made. That, as I say, is directly reflected by the record, if there were any changes made.

Objection sustained.

Mr. Raphael: I would like to point out to you that we have letters in evidence here where the union complained the benefits were reduced. They are in evidence. We have a right to prove that the letters of the union are not well-founded. How else can I prove it?

Trial Examiner: As I say, if you are right, then the record already establishes it, because you say that all of your contentions with respect to the sick leave after the [713] date of that memorandum are contained in the memorandum. In other words, you acted in accordance with that memorandum.

[fol. 593] Mr. Raphael: May I see that memorandum?

Mr. Weissman: Yes (submitting).

(Short pause.)

By Mr. Raphael:

Q. As far as you recollect, Mr. Finkel, after Exhibit No. 31 was announced to the employees, was there any improvement in the absenteeism factor in the office?

Mr. Weissman: I object to that question. It doesn't matter in this particular case whether there was or wasn't any improvement after that date.

Trial Examiner: Sustained.

By Mr. Raphael:

Q. From time to time were there revisions made in the sick leave policy before Local 66 got on the scene?

Mr. Weissman: These questions have been gone into and answered in prior testimony.

Trial Examiner: That is true, but if there is anything else that the witness hasn't testified to, he may do so, with respect to sick leave prior to March 11th, 1957.

The Witness: There were changes.

By Mr. Raphael:

Q. The reasons you have given were that you wanted to discourage absenteeism?

A. That's right.

[714] Q. Was that one of the reasons that prompted General Counsel's Exhibit 31?

A. That's right.

Q. Your testimony was that this sick leave provision applied to all the people working in the white collar division of your company?

A. The entire office.

Q. They were people who were not in Local 66 as well?

A. You had more people not in Local 66; probably twice the amount not in 66 than were.

Q. Was this General Counsel's Exhibit 31 made applicable to everybody?

A. That's right.

[fol. 594] Give us the next meeting that you have.

A. March 29th, 1957, at the New York State Board of Mediation. Present on behalf of the association were Author Graine, Irving Shaffer, Sam Sheer, Herman Sears, Alfred Finkel, Sidney Raphael; present on behalf of the union were the representatives from Superior, Triangle, Williamsburg, Pioneer, plus Mr. Raimist.

Mr. Raphael: How late are we going to work today, Mr. Examiner?

Trial Examiner: As far as I am concerned, I will go on.

Mr. Raphael: I understand we will have to be here tomorrow.

[715] Trial Examiner: It certainly looks that way.

Mr. Raphael: Do you have any other witnesses?

Mr. Weissman: I have Mr. Raimist.

Trial Examiner: Do you have any others?

Mr. Raphael: No.

I want to get through with this case. It is a shame this case lasted as long as it did.

Mr. Newmark: We will finish the direct with this witness.

Mr. Raphael: Of course, I will say that Mr. Weissman hamstrung this case. I want to make that statement.

Trial Examiner: Proceed.

Mr. Raphael: I think I am right.

Mr. Weissman: I won't dignify that with an answer.

Mr. Raphael: You may not dignify that. I know a couple of things.

Trial Examiner: I will let Mr. Raphael continue.

By Mr. Raphael:

Q. State what happened.

A. I already told you before who was present at this meeting.

[fol. 595] At this meeting, we started talking about money. Mr. Raimist said he wanted a fifteen-dollar adjustment retroactive to July 5, 1956. He wanted a $12.50 increase as of January 1, 1957, and he wanted a $12.50 increase as of December 1, 1957, and he wanted a contract that would expire on June 30, [716] 1958. He wanted a total of forty dollars within this fifteen-month period, from March 29th, 1957 to June 30th, 1958. That was what he wanted on money.

Then he said here is the agreement that he wants. He gave us copies of this agreement, which I think is Exhibit 2, Respondent's Exhibit 2, which in effect was the Aetna agreement.

Mr. Weissman: What exhibit number is that?

Trial Examiner: Respondent's Exhibit 2. That was the proposed Aetna agreement.

The Witness: He gave us the Aetna proposal. He crossed out the name "Aetna," but it was obviously Aetna. I should say the Aetna contract. It wasn't the proposal. Obviously at this date it was the contract, because it was dated January 1, 1956, which made it retroactive. It probably was completed some time at the end of 1956.

By Mr. Newmark:

Q. Is it a fact that in the interim between the first of the year and March 29th Local 66 had signed a contract with Aetna?

A. Some time during that time, that's right.

Q. And Aetna was one of your own association members; is that right?

A. That's right.

Q. Go ahead.

A. We then pointed out that it would be very difficult to [717] accept the Aetna contract, in view of the fact that Aetna had divisions which made them different than the rest of the manufacturers. This I can be very clear on. [fol. 596] Aetna has a hollow metal division and it has a Jamestown division at which they manufacure partitionnettes or furniture of some kind, office furniture.

Mr. Weissman: Mr. Examiner, is this testimony what he said at the meeting?

The Witness: Yes. We pointed this out at the meeting. They have the E. J. Boyle Division, which manufactures the large partitions. The hollow metal division is just a small phase, a relatively small phase of their company. They also have an Arnot division and an E. J. Boyle division, and it also has a ballbearing division out in California, I think, which is a very, very lucrative phase of their business, whereas the rest of the manufacturers present only had the hollow metal to manufacture, and it was historically not fair to compare us.

Actually, Aetna never joined the rest of the manufacturers present, having its plant in Pottsville, in any agreement. As far as the shop is concerned, they always had their own contract, because they were really removed. They had their main offices in New York, but their manufacturing facilities were pretty much spread out.

They never joined us in our shop agreements. They had [718] their own shop agreements. They had altogether different practices. They were completely different, diversified. We weren't talking about the same thing.

Q. Did you call this to Mr. Raimist's attention at the meeting?

A. Yes.

Q. What did Mr. Raimist reply to that?

A. He said he didn't care. This was the agreement.

Q. Referring to the Aetna agreement?

A. The Aetna agreement.

As a matter of fact, we said let's go over this agreement and see what have here, anyhow. He had in here estimators. We said, "By estimators, do you mean salesmen?" Again we were trying to find out what this unit consists of.

[fol. 597] We went into Article IV, small division 3. We asked to change it from thirty days to sixty days.

Do you want me to take the time and tell you the discussion that we had on this agreement.

Trial Examiner: It is up to your counsel.

The Witness: We went into the same question of the agencies who were doing their own detailing. That wasn't clear in the Aetna agreement. I am talking about Article V, the union seal. We asked them what about the agencies who do their own detailing.

On this question of discharges, which is Article VI, we [719] insisted that we have some sort of protection for discharge because of the inferior work that an employee would be doing.

We wanted a new clause for union discrimination.

We spoke about promotions and vacancies. We told them we would not go along on seniority, and that as far as qualification of employees, we wanted to reserve the right to judge employees.

On the question of vacation, which is Article XII, we proposed our same plan as we had offered before.

The same thing with the paid holidays as we had offered in our original proposal.

On the question of termination, which is Article XVII, we did not agree on that. We have items that we wanted out, in subdivision 2 and 3.

On the question of the sick leave, we insisted on the five-day sick policy.

On the welfare fund, we didn't go along with this particular one.

On the grievance committee, Article XIX, we said we would discuss that as set up between Raimist and Raphael.

No strike, no lock-out, the same objection as before. We didn't want the lawsuits.

[fol. 598] We even objected to Article XX, subdivision 2. Then we went into Article XXII, the question of the merit reviews and [720] automatics again.

Again we discussed the question of automatics. This is Article XXII, subdivision 2. They had an automatic up to $110. We wanted up to ninety dollars.

There was a question of senior specialist. We wanted the right to determine who was a senior specialist.

Q. Did you review classifications at this meeting?

A. We went over it, yes. We went over what he had here, but we didn't agree with what he had here.

Q. In other words, you disagreed with the classifications of the Aetna agreement?

A. That's right.

Q. Which is set forth in Paragraph 3 of Respondent's Exhibit No. 2?

A. It is Article XXII, Paragraph 3, definitions of classifications. There are a lot of other things crossed out, as far as automatic.

On Note 3 of this particular agreement—we didn't agree on Article XXIII, No. 3.

Q. Who crossed out this portion of Page 13?

A. Mr. Raimist did.

Trial Examiner: It was crossed out before it was presented to you?

The Witness: That's right. I could tell what I touched and what was given to me.

[721] That concluded that meeting.

Q. On what basis was the meeting concluded? Was there any agreement arrived at with respect to anything at all?

A. After all, that was the first time that we had seen—this was really the first that we saw what Mr. Raimist really wanted. Other than the July 19th list of proposals, this was something concrete we could work on. Heretofore, we had been making the offers and making the proposals. He finally handed it to us on March 29th and said, "This is what I want."

[fol. 599] Q. Mr. Gamser was present at this meeting?

A. Yes.

Q. Did he ask your group, the employer group, to submit anything in response to this offer of the Aetna contract? Did he want Mr. Raphael to prepare anything by way of a counter-proposal?

A. Not at this time.

Q. So that the meeting adjourned until what date?

A. April 4th, a few days later.

Q. Where was that meeting held?

A. Also at the New York State Board of Mediation.

Q. Tell us in substance and very briefly what happened.

A. This was held at the Mediation Board, as I pointed out. This time Mr. Gamser was putting us in separate rooms. He said, "You tell me what you want and I will go in and tell [722] the union what you are offering."

He thought perhaps he would get us to give a little more and for them to take a little less and come to some sort of agreement.

Q. You mean he separated the employer group and he separated the employee group from each other?

A. That's right.

Q. Then what happened?

A. We had a chance to digest and to go over the Aetna proposal. We told him that we would not go along on any retroactive basis. That was the first thing that we objected to.

Trial Examiner: Did you give us those who were in attendance at this meeting?

The Witness: This was offered to Mr. Gamser by Finkel, Raphael, Shaffer, Sears, Sheer, on behalf of the association. We told him no retroactive. We offered him a $7.50 package for the first year. We offered him vacations as outlined before.

Trial Examiner: When you say "offered him," you mean you offered to the union through the State Mediator?

The Witness: Offered them through Mr. Gamser.

We offered a three-year contract with a five-dollar increase the second year, a five-dollar increase the third year. [fol. 600] We offered automatic increases up to ninety dollars. [723] Over ninety dollars there would be across-the-board increases that we had offered them. A ninety-day probationary period. There is one classification. Over the ninety-dollars across-the-board, except for the first across-

the-board increase, we were going to give the $7.50 that we had offered for everybody.

If you don't have that information, you would feel that over ninty dollars we didn't offer the $7.50.

Mr. Weissman: I am a little confused about this $7.50. Could I get it clarified?

Trial Examiner: Yes.

Mr. Weissman: Tell us about that.

The Witness: We offered $7.50 the first year, five for the second and five for the third.

Mr. Weissman: To which employees?

The Witness: To all employees.

We also said there would be automatic increases for all employees up to ninety dollars.

By Mr. Newmark:

Q. This offer that you prepared, by the way, was taken after your own group had caucused and considered the making of a proposal?

A. In the meanwhile, between the March 29th and April 4th meeting.

We also proposed seniority—this is the first time that we went along on seniority—coupled with ability. We wanted the right to discharge and giving the right to the union to review discharge based on the claim of union discrimination and personal discrimination.

We said we would work out a plan of classifications. We still didn't have a meeting of the minds on classifications as yet.

We would continue with any present hospitalization plan that was in effect by the various companies, because each company had different hospitalization plans. In order not to hurt anybody, one shop against the other, we said what-[fol. 601] ever plan was present in effect, that would continue in each shop.

The holidays were the same.

The five-day sick leave again.

We also pointed out that Mr. Raimist would have to be a little more flexible in his thinking, because in the New York area we had a lot of competitors who were not covered in his unit, in the five or six employers that were bargaining. We gave him the list of Atlantic, of Acme, of

Acme Dorf, of Coast Line, of Sparton, of Firedoor, of Empire, of National, Chapman and Swanson, Royal, Superior of College Point, General Fireproof, Biltrite, Triumph, and Park Avenue Woodworking, a total of sixteen, if I will add Arch, also.

Q. These were not members of your association?

A. They were members of the association who were not bargaining [725] with Mr. Raimist. He hadn't reached them. I don't know why.

Q. This presented a problem?

A. A very serious problem. As a matter of fact, he had a vote at Atlantic. I believe that he lost his vote at Atlantic.

We also pointed out to Mr. Gamser that we have competitors outside the metropolitan area. You see, most of the people who are in this unit sell material outside of the metropolitan area.

Trial Examiner: When you say "this unit"——

The Witness: The five or six employers involved.

Mr. Weissman: Was it my understanding that with respect to the conversation about flexibility that this was with Mr. Gamser?

The Witness: That is what we told Mr. Gamser.

If you will permit me to finish——

Mr. Weissman: I just asked you about that one point.

The Witness: This is what we told Mr. Gamser.

[fol. 602] Then we said we had other competitors outside of the metropolitan area who were competitors in the fields that we were selling.

Trial Examiner: Let me get another thing straight. You named these other sixteen. They were members of the association?

[726] The Witness: Yes, sir.

Trial Examiner: This committee was not bargaining for them?

The Witness: Mr. Raimist didn't want us to bargain for them.

Trial Examiner: Were you authorized to bargain for them?

The Witness: No.

Trial Examiner: In other words, at all these meetings where employers were represented, was it your understand-

ing that those employers were bargaining for themselves only?

The Witness: No.

Trial Examiner: Who were they bargaining for?

The Witness: They were bargaining for the people who had been certified to bargain with Mr. Raimist.

Trial Examiner: In other words, you thought that the employers who were represented at the various meetings were bargaining because in those shops the union had been certified as the bargaining representative; is that right?

The Witness: Will you repeat that? I am not clear on what you said.

Trial Examiner: Who were these people bargaining for, these employer representatives?

The Witness: Employer representatives?

Trial Examiner: Yes.

The Witness: They were bargaining for the members of [727] the association who were certified with Local 66.

[fol. 603] Trial Examiner: In other words, those members of the association whose employees had designated a union which had been certified by the Board as their representative?

The Witness: That's right.

You see, at many of the meetings the employers did not attend, because he left it to the other members of the committee to handle it.

Trial Examiner: But there was never any idea that the contract which all parties hoped might be reached at these negotiations would cover all the members of the association?

Mr. Newmark: If you know.

I think this is a subject which Mr. Raphael, as counsel for the association, would be best qualified to answer.

Trial Examiner: I don't know. I assume that he participated in the negotiations and he ought to know who these people were bargaining for.

Mr. Newmark: I think the record indicates that this witness was present at these meetings as a member of an association with other co-members of an association, that Mr. Raphael was the attorney, and that the negotiations were on an industry-wide basis.

Trial Examiner: When you say "industry-wide," what do you mean? Association-wide?

Mr. Newmark: This is something which Mr. Raphael would [728] have to explain. I wasn't there, nor am I familiar with this aspect of the case. Mr. Raphael would be best qualified to give testimony on this matter.

Trial Examiner: He apparently did not intend to testify, from what I gather.

He ought to know; he was there.

Was there a committee appointed by the association to bargain?

[fol. 604] The Witness: Yes; the people who came down to these meetings.

Trial Examiner: But were they appointed by the association?

The Witness: Yes.

Let me explain something. At all association negotiations, not all members come down. We will have association contracts, for example, with any particular trade that not everybody is affected by. In other words, if I am a small shop and I don't have a truck, I am not going to sign an association teamster unit. There might be one or two in here that don't even have a draftsman. I don't even know.

Trial Examiner: It is clearing a little in my mind. In other words, at least you assumed that the employers who were represented there were bargaining only for themselves individually, not necessarily as members of the association?

The Witness: No.

[729] Trial Examiner: You tell me now that fifteen or sixteen members of the association had no bargaining representative for employees who were doing this type of work. It that right?

The Witness: That's right.

Trial Examiner: They had no interest in this?

Mr. Newmark: Mr. Examiner, I don't want to confuse this record. I don't think this witness quite understands the implications of these questions.

As to his status of the meeting, I think that so far as I am concerned from the little that I know of this case, we have an association of members in this industry, a por-

tion of whom were certified by Local 66; that they had separate meetings aside from their meetings with Local 66.

I don't know who were present at these association meet-[fol. 605] ings, but from my experience in association work I would say that even though certain members had not been certified it may have been well recognized in the industry that whatever these five were doing would set a pattern for the industry.

The Witness: That is right.

Mr. Newmark: I don't know where this leads to, but I would much prefer that Mr. Raphael, who has been counsel to the association, take over this part of the interrogation. I think we will leave that for Mr. Raphael, because the [730] subject may be important.

Trial Examiner: I think that is a fair request. I will defer further questioning to him on that subject until Mr. Raphael comes back.

Proceed.

By Mr. Newmark:

Q. Have we pretty well concluded what happened at the April 14th meeting?

A. No.

Then Mr. Gamser said, "Look, let's go inside and let us meet them and let us tell them this whole thing."

We repeated our offer that I mentioned before. In addition to pointing out these other manufacturers, we pointed out that there are manufacturers outside the metropolitan area. If you want, I can read them to you: Overly, Niedringhaus, Trussbilt——

Trial Examiner: Just give us the number.

The Witness: There were twenty-five other manufacturers outside of New York that we had to compete and that consideration would have to be given. We were just plain hollow metal manufacturers. It wasn't fair with Aetna.

Trial Examiner: They were not members of the association?

The Witness: No. They were located all over the country.

[fol. 606] At this time, Mr. Raimist said, "Look, either we get this Aetna contract or nothing. Don't tell us about

this, [731] don't tell us about your offers, don't tell us about anything."

He used the word "plead." If he had pleaded in his testimony, he threatened; he didn't plead. He said, "This is the contract. I won't take anything less. I can't take anything less, because of the most favored nations clause." He said he could not take anything less, and he would not take anything less. Either we took this Aetna contract or we had to suffer the consequences.

Mr. Weissman: We are referring to the April 4th meeting?

Trial Examiner: So I understand.

Mr. Newmark: At the Mediation Board.

By Mr. Newmark:

Q. What happened at that point?

A. We were at a complete impasse with the man. After taking the Aetna contract on March 29th and going over it up to the April 4th meeting and then at the April 4th meeting tendering all our——

Mr. Weissman: This is complete hearsay and I move to strike it from the record.

Trial Examiner: Yes.

Go ahead.

By Mr. Newmark:

Q. What time did this meeting break up?

A. Very late in the afternoon, maybe five or six o'clock.

Q. Did it break up with any indication from Mr. Gamser as to what the next thing to do would be?

[732] A. To be very truthful, I was expecting a strike the next morning from Mr. Raimist's threats at the time.

Q. Did you know that on the same day or the same night Mr. Raimist was meeting with the employees of all the shops at his offices to vote a strike, or vote strike [fol. 607] authority? Did you know about that, or did you learn about that later?

A. At the time he said he had to go back to the boys, that there was a meeting, and unless he could tell them he could get the Aetna contract we would have to suffer

the consequences. I didn't know that they had voted a strike that night, or strike authority.

Q. How did Mr. Gamser leave this with the employers and the union? Did he ask for another meeting at that point? Did he adjourn the meeting? What happened?

A. Just how it finaled out, I cannot say. I see he didn't send me any letter that we were to meet again. I don't know how we met again, but we met again the following week.

Q. Did you hear the day after this meeting that strike authority had been voted by Local 66 employees against the employers who were taking part in these negotiations?

Mr. Weissman: Can we have a date for this?

Trial Examiner: He said the next day.

The Witness: I don't know if I heard it the next day, but I heard it within a few days thereafter. In fact, I did hear it the next day. I heard it the next morning.

By Mr. Newmark:

[733] Q. From whom?

A. From some boys in my own office. I heard it the next day.

Q. As a matter of fact, you got a copy of the letter which Local 66 sent to the Mediation Board; is that right?

A. That's right. I knew about this before I received the letter.

Mr. Weissman: Which letter are we talking about?

The Witness: General Counsel's Exhibit 29.

Mr. Newmark: The letter dated April 8th, 1957.

Mr. Weissman: Could I have the witness's answer to that question?

(Record read.)

[fol. 608] The Witness: About the strike vote.

By Mr. Newmark:

Q. You are referring to a letter which has been introduced in evidence as General Counsel's Exhibit 29, a letter from Local 66 to Mr. Gamser, which was dictated on April 5th, 1957 and dated April 8th, 1957.

What happened after this meeting about which you have just testified? Do you recall?

A. I now recall how that meeting ended.

Mr. Weissman: Which meeting?

The Witness: The April 4th meeting.

Mr. Gamser told us to leave and he would remain with Mr. Raimist and he would be in touch with us. We left not [734] knowing whether we were going to have a strike the next day or what it is.

I recall this because when I read this letter of April 8th, one of Mr. Raimist's statements was that the employees were very much annoyed with the fact that the company left the premises of the Board of Mediation; in other words, gave the union a take-it-or-leave-it challenge.

It was really the other way around. Mr. Gamser told us to leave. We just didn't walk out. He gave us the take-it-or-leave-it.

I remember even very clearly talking at the very next meeting, which was April 8th, and bringing up the fact that we were told that we didn't walk out, that Mr. Gamser excused us and told us he would be in touch with us. He just sent this letter out. It was self-serving. It doesn't mean anything. It was wrong.

Mr. Weissman: Mr. Witness——

Mr. Newmark: There is no interrogation of the witness now involved.

Mr. Weissman: Mr. Examiner, I think the witness's re- [fol. 609] marks are self-serving at this point. As a matter of fact, his testimony is so repete with it that it is hard to tell which is evidence and which——

Trial Examiner: I will listen to him and weigh it accordingly when I read the transcript.

By Mr. Newmark:

[735] Q. The record indicates that the charge, which is the basis of this case, was filed by Local 66 on April 16th, 1957.

Does that refresh your recollection now as to the events following that meeting of April 4th, so far as these negotiations were concerned?

A. As I mentioned, this was an impasse. We had come to an impasse. We had received the threat of take it, leave

it, suffer the consequences, he won't be able to hold the boys, and you will have to suffer for it. There were all kinds of threats and innuendoes and frightening gestures.

Instead of a spirit of cooperation and let's get together and get this thing settled and nailed down, there was this threat that you take this Aetna contract, I can't take anything less, what is the sense of fooling around with it, you have to take the Aetna contract or else you are going to have to suffer the consequences.

Q. When this contract wasn't agreed upon on April 4th, 1957, did you communicate that to your associates, Mr. Katz and Mr. Schwartzberg?

A. Yes.

Q. At or about this time did you authorize the granting of any wage adjustments to your employees, as has already been testified in this case?

A. We continued to have our review of both merits and [736] promotions. We just were continuing to operate as we would, really expecting a strike the next day, but we still continued to review.

Mr. Weissman: Is the witness speaking from his own knowledge at this point?

The Witness: Yes.

[fol. 610] Trial Examiner: I think it was testified earlier that you had nothing to do actually with that. There is already testimony in the record, anyhow, from Mr. Halpern and also Mr. Schwartzberg as to what went on during this period with respect to raises and promotions.

By Mr. Newmark:

Q. Mr. Witness, at or about this time you received this telegram from Mr. Raimist, Respondent's Exhibit 5, which is in evidence; is that right?

A. That's right.

Q. That, of course, did not assist in the further negotiations——

Mr. Weissman: Objection.

Trial Examiner: Sustained.

By Mr. Newmark:

Q. Did you get any notices from the State Board of Mediation after this time regarding continuation of hearings?

Mr. Weissman: There has been no testimony as to hearings.

Mr. Newmark: I mean meetings.

A. We continued. We still wanted to come to some sort of an agreement. Now we are starting to get very dubious as [737] to whether or not we ever would, but we still continued.

Q. Was there still another meeting?

A. Yes, there was.

Q. When was that?

A. A week later, on April 11th, at the Mediation Board.

Q. Tell us what happened at that meeting.

A. Present were Mr. Raimist; Mr. Robert Kagan, Pioneer union representative; Jordan, the City union representative; McKay, the Triangle union representative; Charles Kay, the Superior union representative; Sid Appel, the Williamsburg representative; Finkel, Sears, Sheer, Shaffer, Graine, Raphael and Mr. Gamser.

[fol. 611] Q. State what happened at this meeting.

A. At this meeting Mr. Gamser took us into a separate room and said there were a few things he would like to discuss. The first one was the probationary period. The second one was seniority. The third was discharge. The fourth was money.

We then spent time trying to formulate it. We said seniority seems to be a big item, let's try to get that out of the way. We spent a lot of time trying to draw up various types of clauses with regard to seniority.

Shall I give you what we finally came down to?

Q. Give us the substance as briefly as you can and what happened.

[738] A. We said that the principle of seniority, like classification, shall be respected with regard to lay-offs, recalls and transfers. In cases of lay-offs, recalls, transfers, if ability is equal, then seniority shall prevail. The seniority list in accordance with the above——

Q. There is no need for you to read from these notes. Give us the substance.

A. We said we would go along with the provision of seniority, but we wanted a certain protection with regard to ability.

Q. What other subjects were discussed?

A. That stopped right there. That was it.

Q. Was there any discussion about discharges?

A. No. That was the first thing on the agenda. This was presented to Mr. Raimist. No dice. "I want the Aetna seniority."

Q. Who said that?

A. Mr. Raimist.

Q. Did the meeting then adjourn to another date?

A. That's right.

Q. To what date?

A. It just stopped again. It just was a continuation of that same impasse that started on April 4th. Again he was throwing in the Aetna agreement. He said, "You are not going to change the Aetna agreement. It is going to [fol. 612] be the [739] same as the Aetna agreement. It can't be any less. I can't make any changes. This is it. This is what the boys expect. I am not going to take any change in the seniority."

Q. Was there a meeting held on May 1, 1957?

A. Yes; except that we did not decide on April 11th, 1957 to continue. Mr. Gamser made a renewed effort to still try and hope to get this thing settled out. He sent out a letter of April 17th and he called for a meeting on May 1st.

Q. Did you attend that meeting?

A. Yes, I did. I attended all the meetings.

Q. Tell us who was present and what happened.

A. The meeting was at the New York State Board of Mediation, May 1, 1957, two p. m. Present was Mr. Hein, the Triangle union representative; Appel, the Williamsburg union representative; Raimist; Charles Kay, the Superior union representative; Robert Kagan, the Pioneer union representative; H. Jordan, the City union representative, Mr. Raphael, Mr. Finkel, and Mr. Shaffer and Mr. Sheer and Mr. Sears and Mr. Graine and Mr. Gamser.

At this meeting we continued on. We attempted again to come up with another provision on seniority. We pre-

sented three proposals with regard to seniority. We told Mr. Raimist to please take one of the three or adjust some of those three or one of the three. They all accepted the principle of seniority by classification. We were just [740] trying to protect the able man, to let ability prevail. We said we would submit seniority lists in accordance with the ability of the man and we would keep it up to date. We proposed three seniority clauses.

We also discussed a discharge clause and we prepared and submitted a discharge clause to Mr. Raimist, also.

We heard the same thing again: That he has to have the Aetna agreement, take it, leave it, there is going to be a strike any minute now; and as a matter of fact this was the period all during this time since April that [fol. 613] these letters were coming in, these notes, not today, boys, not today, boys, creating this tremendous——

Mr. Weissman: I object. I ask that the latter portion of his answer be stricken from the record.

Trial Examiner: It may be stricken.

By Mr. Newmark:

Q. Was it at this meeting possibly that Mr. Gamser asked the association to prepare some model form of agreement?

A. That's right. He said that we take this or else. We said that we can't take it. So Gamser said, "Do you have anything to offer?"

Mr. Raimist said he would forward to him his proposal of a contract. That is what he did on May 8th.

Q. 1957?

A. That's right.

[741] Q. Do you have a copy of that proposed contract?

A. Yes, I do.

Trial Examiner: That is Respondent's 26 in evidence.

The Witness: I don't have it marked here.

Mr. Newmark: It is General Counsel's Exhibit 26.

Trial Examiner: I mean General Counsel's Exhibit 26, yes.

The Witness: It is a ten-page document.

By Mr. Newmark:

Q. You say this proposed form of agreement, which was sent by Mr. Raphael on May 8th, 1957, was sent to the Mediation Board; is that right?

A. That's right.

Q. For transmittal to Local 66?

A. I don't know. I imagine so. We sent it to Mr. Gamser.

Q. Did Mr. Gamser then call another meeting?

A. He did.

Q. For when?

A. May 13th.

[fol. 614] Q. 1957?

A. 1957.

Q. Where was that meeting held?

A. At the New York State Board of Mediation. Present were Mr. Raphael, Finkel, Shaffer, Sears, Sheer, Graine, Mr. Gamser. The following union representatives were present: Charles Kay, Sidney Apel, Mr. Raimist, Robert Kagan, H. [742] Jordan, and Hein, of the various shops.

Q. Tell us as best you can in substance what happened at that meeting.

A. Mr. Gamser stated that we had met there; this was the sixth meeting that we had there. We had met on December 5th, March 29th, April 4th, April 11th, May 1st and May 13th. We were a great deal apart from each other. We had offered one contract.

Trial Examiner: Just give us in substance what was said.

The Witness: This is what he said. He was ready to throw his hands up. That is why he was leading up to what he said.

Trial Examiner: Mr. Gamser?

The Witness: Mr. Gamser.

Mr. Raphael had submitted one contract and Mr. Raimist had insisted on another contract.

Mr. Weissman: Mr. Examiner, the witness keeps on characterizing everything, "insists upon," and using various words which have that type of meaning. Why doesn't he restrict himself to what was said?

The Witness: That is exactly what happened. I was present. You were not.

Mr. Weissman: That is your interpretation, Mr. Witness.

Trial Examiner: In this type of examination concerning [743] the events which you are talking about, it is better, if you can, to summarize what Mr. Gamser said, or anyone else, rather than draw conclusions.

[fol. 615] The Witness: It seems that the only amendment that Mr. Raimist would make at that time was, he said he might consider taking five dollars less from his forty-dollar increase that he wanted. He wanted on July 5, 1956, fifteen dollars; January 1st, 1957, $12.50; December 1, 1957, $12.50. He said on that forty-dollar package, he would take five dollars less. He might consider taking five dollars less.

Mr. Weissman: Mr. Examiner, I don't think the witness is testifying with respect to what occurred at this meeting but at some other meeting. The witness is saying that Mr. Raimist offered five dollars less and then he repeats everything that occurred at some other meeting at some prior date.

Trial Examiner: As I indicated before, I expect the witness only to summarize what was said at that particular meeting concerning which he is testifying.

The Witness: At this meeting Mr. Raimist offered this five dollars less. He said that if that would help have us accept his package, he would take five dollars less, from the forty to the thirty-five. This was offered as his final gesture at this meeting.

At this point Mr. Gamser said, "I suggest arbitration."

It was at this juncture. This was an impasse that had [744] continued now for over a month. He suggested arbitration. He said you would have to go to arbitration and straighten out the question of seniority, vacations, discharges, holidays, monies. He said we might as well go to arbitration and get this whole thing straightened out. He was at his wits end with this thing.

[fol. 616] I said we had increased our offer at that time to eight dollars from the $7.50. That was the final offer that we had made, as far as that first year was concerned.

That was the last meeting that we had.

By Mr. Newmark:

Q. Just before you continue, was there any indication then that there would be a strike against any of the firms at that meeting?

A. We were all, and I personally, expecting a strike.

Trial Examiner: The question was, were there any indications expressed at that meeting.

The Witness: Yes.

By Mr. Newmark:

Q. Who indicated that at the meeting?

A. Mr. Raimist did.

Q. What did he say?

A. He just repeated the same position he had before. He said, "If you don't take this Aetna contract you are going to have a strike." He said, "I have let you get away with it long enough. You are going to have a strike."

Q. In fact, was there a strike in any shop in the industry [745] after that meeting?

A. Yes, there was.

Q. Where?

A. At the Pioneer.

Q. What date did that strike start?

Mr. Weissman: Mr. Examiner, I don't know what the relevancy is of the strike at Pioneer to the proceeding.

Trial Examiner: Sustained.

Mr. Newmark: It is simply to indicate that Mr. Raimist was carrying out the threat that he made at the meeting of May 13th.

Mr. Raimist: There were subsequent meetings at Pioneer.

Trial Examiner: I will let him answer that question.

You said there was a strike at Pioneer?

[fol. 617] The Witness: Yes.

Trial Examiner: What was the date?

The Witness: May 23, ten days after the meeting. It was a six-week strike that went up to July 8th, from May 23rd to July 8th.

Mr. Newmark: Mr. Examiner, it is now 4:30. We have had a long day.

It may be well to conclude this witness's direct when Mr. Raphael is on the scene tomorrow morning.

Trial Examiner: We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., Thursday, February 5th, 1959, an adjournment was taken to Friday, February 6th, 1959, at 9:30 o'clock a. m., at the same place.)

[fol. 618] [746] Stenographic Transcript of Testimony at Hearing of February 6, 1959

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[747] PROCEEDINGS

Trial Examiner London: The proceeding will be in order.

ALFRED FINKEL resumes as a witness for and on behalf of the Respondent, and having been previously duly sworn, was examined and testified further as follows:

Direct examination. (Continued)

By Mr. Raphael:

Q. Mr. Finkel. I understand when this hearing was recessed yesterday you had concluded giving your version of the May 13th, 1957 meeting at the New York State Mediation Board where you met with, among others, Mr. Raimist; is that correct?

A. That is correct.

Q. Following that meeting you received a letter, Exhibit 28, which is dated May 17th, 1957. Do you recall that letter?

A. Yes, I do.

Q. Did you thereafter upon receipt of that letter consult with me about formulating a reply?

A. I called you up and asked whether I should answer this letter.

Mr. Raphael: At this time I will call upon General Counsel to produce a letter which was sent by Mr. Finkel on behalf of the Williamsburg Steel Products Company to the

[748] Architectural Engineering Guild, Local 66, attention of Mr. J. L. Raimist, which letter is dated May 21, 1957.

Mr. Weissman: We have no such letter.

Mr. Raphael: Do you concede we served you with a notice to produce?

Mr. Weissman: I have a notice to produce.

By Mr. Raphael:

[fol. 619] Q. I show you, Mr. Finkel, what purports to be a photostatic copy of a letter dated May 21, 1957, which I will first mark for identification, two sheets.

Trial Examiner: Respondent's 11.

(The document above referred to was marked as Respondent's Exhibit 11 for identification.)

By Mr. Raphael:

Q. I ask you whether this is a true copy of an original letter similar to the one I am showing you and which was dated May 21, 1957.

A. Yes, it is.

Q. Do you recall the original of this letter being dictated by you?

A. I do.

Q. Do you recall that after you had dictated this letter, the letter was typed?

A. I do.

Q. And that the letter which was typed is in fact the letter which I show you as Respondent's Exhibit 11 for [749] identification?

A. It was.

Q. Did you sign such letter as Alfred Finkel?

A. I did.

Q. On behalf of the Williamsburg Steel Products Company?

A. I did.

Q. Did you review with me the contents of that letter?

A. I did.

Q. On May 21, 1957 did you make copies of the original of that letter after you had signed it?

A. I did.

Q. I note that the letters "CC" are here. Does that stand for "carbon copy"?

A. Our snap-out form has an original and two carbon copies. In view of the fact that I needed eight, they weren't really carbon copies. They were photostated copies.

Q. You made photostats?

A. Yes.

Q. These are the various places where the copies or the photostatic copies of Respondent's 11 for identification were to be forwarded?

A. That's right.

[fol. 620] Q. The letter is addressed to the Architectural Engineering Guild, Local 66, at 160 West 44th Street, New York 36, New York. Was that the address to which you had been mailing [750] correspondence to that union prior to this date?

A. That's right.

Q. Had it ever been returned to you before that time?

A. No.

Q. Was there an envelope in which the original of that letter addressed to Architectural Engineering Guild, Local 66, was put into?

A. Yes.

Q. Do you recall who mailed that envelope? Was it sealed, first?

A. It was sealed.

Q. Do you generally handle the mail in the office?

A. No.

Q. In connection with letters dealing with Local 66, did you on occasion in fact handle that mailing of the correspondence yourself?

A. I would.

Q. What was the reason for that?

A. I wanted to make sure the letters were out. When I put it in the mail box, I knew they were out.

Q. On many occasions you did that, or was it on most occasions?

A. I would say on most occasions of this nature, or what I would consider very important correspondence, I would mail it myself. I would take it to the box on Greenpoint Avenue [751] and mail it.

Q. This letter was quite important?

A. It was quite important, I thought.

Q. Did you in fact on May 21, 1957 mail in a post office letter box the envelope which was addressed to Architectural Engineering Guild, Local 66, addressed to 160 West 44th Street, to Mr. J. L. Raimist, containing the original of the letter which was similar to Respondent's Exhibit 11 for identification, bearing your signature, and which envelope was sealed and properly post-marked at the time that you you put it into the post office box?

A. I mailed it.

[fol. 621] Q. And at the same time coincident with the mailing of that letter to Mr. Raimist, did you mail the same letter or copies of that letter or photostatic copies to the various other people who are indicated in this exhibit?

A. I did.

Q. Did any of those letters ever get returned to your office?

A. Not one.

Mr. Raphael: I offer this in evidence.

Mr. Weissman: Mr. Examiner, I oppose the introduction of Respondent's Exhibit 11 for identification. The letter is replete with self-serving statements. It has no value from any evidentiary standpoint. The letter that preceded [752] this, which was Mr. Raimist's letter, had value, in that Mr. Raimist requested individual bargaining. This is nothing more than self-serving statements; in addition to which Mr. Raimist never received this letter. He has made an intense search for it and has not come up with it and has no recollection of ever receiving it.

Trial Examiner: The objection is overruled and it may be received.

(The document previously marked for identification as Respondent's Exhibit 11 was received in evidence.)

By Mr. Raphael:

Q. Mr. Finkel, in General Counsel's Exhibit 28 in evidence, reference is made in the P. S. of that letter to the posting of a notice in the drafting room concerning arbitration of the impasse between Williamsburg Steel and

Local 66. You are familiar with that postscript in this exhibit?

A. Yes, I am.

Q. Did you in fact have such a bulletin posted on the bulletin board in that part of the premises where customarily notice pertaining to draftsmen and listers were posted?

A. I did.

[fol. 622] Q. Do you have in your file a copy of the original of that notice which was so posted and which was referred to in General Counsel's 28? Do you have it in front of you?

[753] A. Yes, I do.

Mr. Raphael: Mark this for identification, please, as Respondent's 12.

(The document above referred to was marked as Respondent's Exhibit 12 for identification.)

By Mr. Raphael:

Q. Would you please be good enough to look at Respondent's 12 for identification and tell the Trial Examiner whether in fact this is a true photostatic copy of the original of the bulletin which you did in fact post on or about the date listed on that exhibit, and which in turn is referred to in General Counsel's 28?

A. It is.

Mr. Raphael: I offer it in evidence.

Mr. Weissman: Mr. Examiner, do we have a date with respect to when this was posted?

The Witness: I think May 16th. Probably the day before Mr. Raimist sent out his letter, which was May 17th.

Trial Examiner: The notice is dated May 16th.

The Witness: May 16th.

Mr. Raphael: Mr. Raimist's letter of May 17th refers to that bulletin. I assume that it must have been up there at the time he wrote his letter.

Mr. Weissman: May I see the original?

The Witness: Yes (indicating).

[754] I found the exact carbon copy. This is the snapout copy of the notice (indicating), whereas the other that

I just showed you was the copy that was attached to these letters. This is a photostat of this (indicating). You can even see the way it is turned up (indicating).

[fol. 623] Mr. Weissman: I have no objection to its introduction into evidence.

Trial Examiner: It may be received.

(The document previously marked for identification as Respondent's Exhibit 12 was received in evidence.)

By Mr. Raphael:

Q. In the P. S. of General Counsel's Exhibit 28 a statement is contained to the following effect: "We have just heard that you posted notices yesterday, that is, in the drafting room, et cetera, which implies or could be interpreted to imply that an agreement to have the A. A. A. arbitration has been reached."

Reference is made, as I have read it to you, to the notices—plural. Apart from Respondent's 12, which is now in evidence, did you post any notice other than this on or about May 16th, 1957 dealing with the matter of arbitration?

A. This was the only notice that was posted.

Q. How many of this did you post? Just the one copy?

A. Just the original.

Q. Did you give a copy of it to Sid Appel?

[755] A. No.

Q. Or was it just posted on the bulletin?

A. It was just posted on the bulletin board.

Q. Where the reference is made in the letter of General Counsel's Exhibit 28 to notices and that statements were made implying that an agreement was reached to have the A. A. A. arbitrate, did you in fact ever make any such statement, either in writing or orally?

Mr. Weissman: At this point I will object. The witness has testified this is the only notice that was posted and the notice will speak for itself.

Trial Examiner: There is a reference in the letter to statements being made.

Mr. Raphael: That is right.

[fol. 624] Trial Examiner: The objection is overruled.

Mr. Raphael: Read my question.

(Question read.)

The Witness: I never did.

By Mr. Raphael:

Q. The only reference you made about the willingness of Williamsburg Steel to arbitrate the issue would, if at all, be contained in Respondent's 12 which is in evidence?

A. That is the only reference.

Q. Did you ever at any time hear from Mr. Raimist or any other representative of Local 66 respecting the proposal [756] contained in the bulletin, Respondent's Exhibit 12, respecting acceptance or willingness to join in the request for arbitration?

Mr. Weissman: Mr. Examiner, I am going to object to that question. Mr. Raphael is assuming certain facts that do not exist. He is interpreting Respondent's Exhibit 11, the letter of the 21st. If he wishes, he can ask the witness if he received any reply to it; that is all right. But with respect to his interpretation of what is in the letter, I object to that.

Trial Examiner: The objection is overruled. He may answer.

(Question read.)

A. I never heard from him.

Mr. Weissman: Mr. Examiner, the question that was asked concerned a notice which was posted. There is no evidence this notice was mailed to the union.

Trial Examiner: But the same matter was raised in Respondent's Exhibit 11, the letter of the 21st.

What I am concerned with in respect to this line of examination is whether or not there was ever any answer [fol. 625] from the union in response to the request to submit the matter to arbitration.

The Witness: There never was.

By Mr. Raphael:

Q. In Exhibit 7 and 8 for identification, [757] which were respectively schedules of employees who left in 1957 and those who left in 1956, you will recall that testimony was given about that during the trial, the names of the employees that were listed, and at the time, in the year 1957 those listed were between the months of January and August of 1957.

Do you recall that?

A. Yes.

Q. For the year of 1957 did you at my request make a further examination of your payroll records covering the employees within the pertinent unit in this proceeding to ascertain how many, if any, employees left after August, 1957, and the circumstances under which they left? Did you make such an examination?

A. I did.

Q. Will you please tell us what you found?

Mr. Weissman: Mr. Examiner, at this point I wish to object for this reason:

We have General Counsel's Exhibit 30-A, B and C. That will indicate people who were working for the company. It will indicate when they left the company. The evidence is in. I think this is just duplication and unnecessary.

The Witness: That sheet——

Mr. Weissman: One second.

By Mr. Raphael:

Q. Will 30-A indicate that?

[758] A. No.

Mr. Raphael: That is the reason I am bringing it out.

Trial Examiner: Why won't it?

[fol. 626] The Witness: It won't show whether they were let go or whether they left of their own accord. It will show the employment terminated, but not the reason.

Mr. Weissman: Do you intend, therefore, to determine from this witness which employees were fired and which left on their own accord?

Mr. Raphael: That's right.

Mr. Weissman: Without going into the question of when they left?

Mr. Raphael: I am not going into the question of when they left. It is just after August of 1957.

Mr. Weissman: After August of 1957?

Mr. Raphael: Yes; in the year of 1957.

You see, we have an exhibit here which gives us employees from one date to another date. I wanted to supplement that for the balance of the year.

Mr. Newmark: That is 1956.

Mr. Raphael: No; 1957.

The Witness: 1957.

Trial Examiner: It deals with '57.

Mr. Raphael: That's right.

Mr. Weissman: Mr. Examiner, I wish to object for the [759] further reason that this witness has testified that he has nothing to do with respect to the discharge or the resignation of employees. Mr. Finkel does not know of his own personal knowledge whether an employee has resigned or was discharged for cause or any other reason.

Mr. Raphael: Why don't we ask him?

Trial Examiner: I don't know. Find out from him.

[fol. 627] Mr. Weissman: Mr. Finkel testified to that under cross examination, as I recall, that he did not have any contact with respect to the employees.

Mr. Raphael: I don't think that that is altogether right.

Mr. Weissman: He testified that his only supervision was with the payroll department.

Trial Examiner: As I recall his testimony, he said he did not hire or fire personally.

The Witness: That is right.

Trial Examiner: You may inquire as to the extent of his knowledge.

By Mr. Raphael:

Q. What did you ascertain?

Trial Examiner: Perhaps counsel would be entitled to inquire now as to the basis of his knowledge, if you want to.

Mr. Weissman: Yes.

Mr. Finkel, you testified you supervised the payroll department and the office?

[760] The Witness: Yes.

Mr. Weissman: I believe you testified that you do not become involved in the actual supervision of employees at their work; is that correct?

Mr. Raphael: I object to the form of the question. You are absolutely misstating the evidence. That is not the evidence.

Mr. Weissman: Then let me ask the witness.

Mr. Raphael: I object on a *voir dire* to cross examining a witness. A witness may be asked pertinent questions to ascertain what his knowledge is, period.

Trial Examiner: Yes.

[fol. 628] Mr. Weissman: How did you obtain the information which is on that paper?

The Witness: From my payroll department.

Mr. Weissman: Just from your payroll department?

The Witness: Yes.

Mr. Weissman: Did you interview any of the supervisors, like Mr. Halpern or any of the other individuals that worked with the employees?

The Witness: Did I interview them—when?

Mr. Weissman: To get this information, to determine this information.

The Witness: I verified it with them. First my records indicated it and then I verified it with them.

[761] Mr. Weissman: Mr. Examiner, at this point I don't think this witness is competent to testify to this information. This information is obviously information that, one, he got from his payroll records, which is not first-hand information; and secondly, he verified it, which means he is attempting to give us hearsay information.

Let the company bring up the supervisors that are in charge of these men and let them testify as to which men left and which were to remain. In fact, they were here. They were on the stand and they were not asked these questions.

Trial Examiner: You say you obtained this information from you payroll records?

The Witness: Yes; and I also spoke—in other words, I double-checked. Being an accountant by nature, I double-check everything I do, and I double-checked it to make sure the information I had was absolutely right.

Trial Examiner: How did you double-check it?

The Witness: I spoke with Halpern about it.

Trial Examiner: Is he the only one you talked to about it?

[fol. 629] The Witness: That's right.

Trial Examiner: When you say you got it from your payroll records, what records are you talking about?

The Witness: When a man leaves, we indicate on the sheet whether or not he was fired or he left on his own accord. [762] The reason for that is very simple: We have to know how to answer when we get an inquiry for unemployment insurance.

If a man left on his own accord, he is not entitled to unemployment insurance and we so mark it. If he was fired, we would mark it "fired" and he is entitled to unemployment insurance.

We have accurate information, but I wanted to double-check it and I spoke with Halpern about it, also.

Mr. Weissman: Mr. Examiner, if the respondent wishes——

Mr. Raphael: If on every detail we have to bring out records, this case will drag out for six weeks. We will bring records and Mr. Halpern will come here.

I think counsel is being mean about this situation; he is not being practical. We have had this all through this case. That is why this case has dragged to seven days and it may go to ten days. It is a joke.

Mr. Weissman: You want to be practical only when it helps you.

Mr. Raphael: I have conceded more things for you here than you have hair in your head.

Mr. Weissman: If the respondent wishes to bring up the pertinent witnesses and the pertinent records, let him do so. A piece of paper with names on it is not sufficient.

Trial Examiner: Technically speaking, I think there is some merit to what the General Counsel said.

[fol. 630] [763] Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Weissman: Mr. Examiner, before you rule on this, other exhibits that I attempted to put into evidence were rejected, although I thought that they were pertinent, and

they were included in the rejected file. Mr. Raphael can do the same thing, as far as I am concerned.

Trial Examiner: As I say, technically I think there is merit to the General Counsel's objection. But I assume, if you insist upon it, they would bring their records in here.

Mr. Raphael: That is right.

Trial Examiner: I am going to admit this exhibit, with this understanding: You may send your investigator out, and if you find you want to reopen the hearing in order to verify this or check this further, I will reopen the hearing.

Mr. Weissman: Mr. Examiner, I have no recourse but to accept your ruling, but I wish to point out that there was testimony here by another witness with respect to the same type of evidence and it went in without any objection because the individual had immediate supervision of the employees. The respondent had every right at that time to ask these questions.

Mr. Raphael: That is not correct.

[764] Trial Examiner: This exhibit will be received under the conditions which I have just suggested.

Mr. Raphael: I am not asking for that. I just want to indicate this witness that in addition to the names here there were additional names put on.

Trial Examiner: Proceed.

By Mr. Raphael:

[fol. 631] Q. Give us those names.

A. For the balance of the year, there were three other people who left. Do you want the dates that they left?

Q. No; just the names and the reasons.

A. McCain left on his own accord; Nelson was let go; Friedman was let go.

Q. In 1956, on the other exhibit, we have the information there of the drafting room personnel who left in 1956, and all we have there is the months of July, August and September.

Are there any other names that you want to add to that exhibit?

A. For the first half of 1956, I have M. Diamond, G. Binkowitz, Joseph Impastato, Nelson Sepolveda, J. White, Joe DeMartino, Earl Harris—Earl Harris was the only one that was fired—R. Bartman, H. Hintze, I. Schnebel

and R. Ramirez. Harris was definitely fired. As a matter of fact, there was an attempt at a National Labor Relations Board case on that.

Q. These names that you have read off in '56 begin with the [765] beginning of March down to July 1st; is that right?

A. That's right.

Trial Examiner: In connection with this matter, so that we can have the record complete, Mr. Weissman, I will give you one week after we close the hearing to make whatever investigation you want.

If I hear from you at that time that you want to check the matter further and reopen the hearing, I will grant the motion.

Mr. Weissman: All right.

Trial Examiner: We will take a recess.

(Recess taken.)

[fol. 632] Trial Examiner: On the record.

By Mr. Raphael:

Q. Mr. Finkel, there has been received in evidence here Respondent's Exhibit 5, which is the telegram of April, 1957.

Do you recall that telegram dated April 19th? Do you have a copy in front of you?

A. Yes, I do.

Q. Did you and Mr. Raimist at any time ever have occasion after April 19th to discuss the contents of Respondent's Exhibit 5?

A. Yes.

Q. At any of those meetings that you told us about?

A. Yes.

[766] Q. Do you have any recollection of what was discussed concerning this telegram?

A. Very clearly.

Q. Will you tell us, please?

A. At the very next meeting, May 1st, I prefaced the beginning of the meeting with a statement directed directly to Mr. Raimist, who was present, and I told him that the

use of these tactics of sending telegrams and sending letters and attempting to infuriate or antagonize people——

Mr. Weissman: I ask that this be stricken.

Mr. Raphael: This is what he said.

The Witness: This is exactly what I told him.

Trial Examiner: Go ahead.

The Witness: It is not going to help the whole tonus of this negotiation and feeling in helping us to arrive at a contract. He sends a telegram——

By Mr. Raphael:

Q. Is this what you told him?

A. This is exactly what I told him.

He sends a telegram to the company and he follows it up with a letter to Mr. Katz in which he tells him to stop—accuses Mr. Katz of using Nazi-type techniques.

Mr. Weissman: There is no testimony to a letter that I know of in this case.

[fol. 633] Mr. Raphael: This is the conversation he had with him.

Trial Examiner: You are giving the conversation?

[767] The Witness: That's right. The telegram was sent on April 19th. Mr. Raimist followed up with a letter on April 22nd.

He accuses a man of using Nazi-type techniques. He actually used "Nazi-type persecutions," and he tells this to a man who lost practically his whole family by the Nazis, including his mother, who was very, very upset about the fact that this had happened, and now accuses him of using the same techniques as the Nazis.

I said that I didn't know what he meant to accomplish by this telegram, "But you are not helping anyone, any feelings or attempts to coming to any sort of agreement with techniques like this, by telegrams and letters," and that as soon as we stop this berating and as soon as we get down to cementing and getting finished with a contract, the better off we will all be, because by this time he was completely immovable.

Mr. Weissman: At this point the witness is not speaking about a conversation.

The Witness: That is right. That is exactly what I told him at the beginning of the meeting.

Trial Examiner: The last part may be stricken.

By Mr. Raphael:

Q. What reply, if any, did Mr. Raimist make to those statements? Do you recall? Did he say anything about it? [768] A. I told him that I was willing to forget about the telegram. We were so upset about it——

Mr. Weissman: Mr. Examiner, the witness should stay to discussions.

[fol. 634] The Witness: I told him that if the man is going to send me telegrams like this, this man isn't going to do business, that he doesn't want to make any sort of deal. I prevailed upon Mr. Katz and Mr. Raphael prevailed upon Mr. Katz. He said, "Ben, let's finish up with this thing. Let's forget about it."

He felt with a telegram like this he just doesn't want to have anything to do with him. You cannot accuse a man of being a Nazi and using Nazi-type techniques.

Mr. Weissman: Mr. Examiner, this witness continuously goes from evidence to hearsay, from evidence to hearsay, until you don't know which is evidence and which is hearsay.

Trial Examiner: Yes. I think, Mr. Finkel, you should keep in mind that under the rules of evidence all you can give us with respect to this subject is conversations you had with Mr. Raimist or statements you made during the conference.

Any views expressed by other members of the firm to you, you cannot relate here. You must confine yourself to what you said at the meetings.

The Witness: I told him that I was told not to come [769] down to this meeting any more because of such accusations, but Mr. Raphael had prevailed upon Mr. Katz and told Mr. Katz and told myself not to take this personally and to continue and let's try to cement and arrive at an agreement.

Mr. Raphael at this next meeting, which was May 1st, the time I told Mr. Raimist this, pointed out——

By Mr. Raphael:

Q. Is this in the presence of Mr. Raimist?

A. Yes. This is all together.

Q. Then you can say it.

A. He pointed out, let's forget about this telegram; let's stop this, and let's try to get a contract rather than telegrams back and forth.

[fol. 635] Mr. Weissman: What is the date of this meeting?

The Witness: May 1st. Then we went on to the meeting.

By Mr. Raphael:

Q. I would like you to look at Page 3 of General Counsel's Exhibit 39, which is the statement purportedly made by Mr. Langiulli, in which I am pointing to references made in this statement in which certain things are attributed to you with respect to Mr. Langiulli.

I ask you to tell us, after reading these statements on Page 3, what you know about them.

Mr. Weissman: Which section are you talking about?

Mr. Raphael: Let him look at the page. I don't want to direct him to do anything. I don't want to lead the witness.

Trial Examiner: This can be pretty involved. You say [770] tell us about the whole incident.

Wasn't that your question? I thought you specifically said——

Mr. Raphael: That I refer to the last paragraph?

Trial Examiner: I thought you did.

Mr. Raphael: I amend my question. Let him read the whole page or any other page there that he thinks has reference.

Mr. Weissman: Unless Mr. Raphael is prepared to point out which part of this affidavit he wants the witness to read, how can I determine whether the question is objectionable or not?

Trial Examiner: As I say, your question was pretty broad.

Mr. Raphael: As long as Mr. Weissman puts it on that

basis, I will pinpoint the part. I didn't want to do it. I thought I might be leading the witness.

[fol. 636] Mr. Newmark: Beginning with the last paragraph on Page three.

By Mr. Raphael:

Q. On Page one there is a statement in this General Counsel's Exhibit 39 reading as follows:

"On or about March 11, 1957 the company posted a notice on the employee's bulletin board announcing a new sick leave plan. On the same day that this notice was posted I spoke to Chief Engineer, Ernst Halpern, about this new plan. I [771] asked him, 'How come you have put this up?' "—and then in pencil above that—"The company had put this up without any discussion with the employees. He replied that he and Mr. Finkel, the office manager and the son-in-law of Mr. Katz who owns the business, have been discussing this for the past six months and decided that this was the best plan."

Did you in fact have any discussions for a period going over six months to decide on any new plan of sick leave?

A. No.

Q. Did you ever make such a statement to Ernst Halpern about that, that you had been discussing anything for six months?

A. No.

Q. On Page 3 of Exhibit 39, in the last paragraph, I want to read you the following quoted text:

"In February 1957 about a week after Local 66 and membership had approved the contract with Aetna Steel Company, Mr. Finkel accosted me in the corridor of the office one day, he asked me to come into his office. I came in. He said he wanted to ask me something. He had heard that the contract with Aetna had been signed. I said that it had been.

"He said, 'Don't you think it is a good deal they got?'

"I replied, 'What do you think is a good deal?'

"Finkel said, 'Look at the pay they are getting and the [772] increases in the contract.'

[fol. 637] "I replied I was not too familiar with the condi-

tions at Aetna. I said I knew about the contract but I couldn't judge if it was fair or bad policy. He asked me if I did not think it would be good if the men in Williamsburg got a contract like that. I asked him why he thought it would be good for the men in the company to get such a contract since we were the next lowest paid in the industry.

"Finkel said that the union was poisoning my mind and where did I get such information like that. He said that he could how me figures which would prove that we were were the highest paid employees in the industry.

"I answered the only reason for that was that we put in a sixty or seventy-hour week whereas employees in other companies work forty hours per week. I told him if you take away our overtime our base pay doesn't amount to anything. Finkel told me he thought I was talking through my hat and that probably I had heard about men who have been with some company for twenty-five years but a five-year man wasn't getting nearly as much.

"I told him that I had talked to almost every man in the industry in other companies over the past month and that they had told me about the earnings of the average man in their company and that it was much higher than what the average man made in Williamsburg."

[733] Did you have in February of 1957, or in fact at any other time, any conversation with Langiulli in which the subject matter that I related to you from the text of his statement was ever the subject matter of your discussion with him?

A. Positively no.

Q. I want to read you specifically again from the same text I read, excerpt this sentence, on Page 4:

"I answered the only reason for that was that we put in a sixty or seventy-hour week, whereas employees in the other companies worked forty hours per week."

[fol. 638] Did people in your place in the drafting room work seventy hours a week, Mr. Finkel, to your knowledge?

A. No.

Mr. Newmark: The middle of Page 5, please.

By Mr. Raphael:

Q. This is from Page 5 of the same Exhibit 39. These statements are made in part by Mr. Langiulli, referring to a conversation he had with Sid Appel:

"I replied to Sid as follows: 'In the first place, Sid, the men picked you to be on the steering committee—' "

Trial Examiner: Mr. Raphael, if the purpose of your question now is to impeach the witness who made that affidavit with respect to a conversation had not between the affiant there, but between someone else and Mr. Finkel, that is pure hearsay, and so the affidavit will not have any value in that [774] respect.

Mr. Raphael: Then I won't pursue that matter. I understand your point. It is clear to me.

Mr. Newmark: It is admitted in evidence.

Mr. Raphael: Well, for a limited purpose.

I have no further questions with this witness, except that I would like to clear up something which I understand created—maybe I am wrong, but I thought it created—some confusion at the end of the session yesterday. I wasn't here. I had to go to another hearing. I want to clarify something —about our association and the bargaining, if you want that cleared up.

Mr. Weissman: Mr. Examiner, is Mr. Raphael under oath?

Trial Examiner: He is not giving any testimony.

Mr. Raphael: No. I am trying to tell you something. I can bring it out through this witness very easily.

[fol. 639] —Trial Examiner: I don't know how it is going to be brought out.

Mr. Raphael: I want to tell you what I had in mind. We can do it off the record and then you can put it on the record.

Trial Examiner: No. Go on.

Mr. Raphael: Our association is composed of companies who operate plants in New York and outside of New York.

Trial Examiner: If you are going on like this, if Mr. [775] Weissman persists in a regular manner, if you can bring it out through testimony by Mr. Finkel, you better do it that way.

By Mr. Raphael:

Q. The Hollow Metal Door and Buck Association, Inc. is composed of employers who are engaged in the hollow metal industry, is that right, generally?

A. Generally, yes.

Q. Among other things, they make make hollow metal?

A. That's right.

Q. We have approximately what? Twenty-five members?

A. Somewhere around that.

Q. These twenty-five members operate factories?

A. That is correct.

Q. Do you have a good working knowledge of the operation of the plants of these various employers from your experience over the years?

A. I think I have a fair working knowledge of each one.

Q. To your knowlege, do all of these employer members employ draftsmen or listers?

A. They all do not.

Q. Are there some employer members who do not have in their employ draftsmen and listers?

A. There are.

Q. Is it not a fact that it is only those companies which are engaged in the manufacture of engineered, custom-made [776] hollow metal that require the services of draftsmen and listers?

A. That is correct.

[fol. 640] Q. That is a specialty within the hollow metal business?

A. That is correct.

Q. In our negotiations with Mr. Raimist, which you have told us about over those many months, was the subject matter ever raised by you with Mr. Raimist about, or was there a discussion about, those employers who were members of the Hollow Metal Door and Buck Association who did or did not have draftsmen or listers in their employ? Did you have some talk with them about it?

A. Yes.

Q. I understand that that happened at the May 1st meeting, or was it at some other meeting?

A. It was an April 4th meeting.

Q. Tell us what was said at that time bearing on that subject, and try to be as brief as possible.

A. As part of the attempts to bargain with him, we introduced the fact that there were——

Q. This your discussion with Raimist?

A. Yes. That is what we had told him, that there were manufacturers in New York that were outside the realm of Mr. Raimist. We prepared a great list of names.

Q. Did you give him those names?

[777] A. Yes, we did.

Q. Tell us what names you gave?

Mr. Weissman: This is repetitive.

The Witness: I gave it yesterday.

By Mr. Raphael:

Q. What did Mr. Raimist say in response to that if, anything?

Mr. Weissman: This is repetitive. Mr. Raphael was not here yesterday.

Mr. Raphael: I am just asking for myself. It will take a second.

A. His answer was that he still wanted the Aetna contract. He wasn't concerned about anything.

[fol. 641] Q. At the time we were negotiating with Raimist, the companies that were around the table were your company, Williamsburg Steel; there was World Steel; there was Pioneer Fire Proof Door Corporation; there was City Steel Door; there was Triangle Steel, and Superior Fire Proof Door and Sash?

A. That is correct.

Q. Atlantic Metal had had an election and Local 66 was not certified, so they were out of the picture.

A. That is right.

Q. Aetna Steel Products and American Steel Products had negotiated their own agreement by that time with Local 66?

A. That is correct.

[778] Q. So they were out.

A. That is correct.

Q. In addition to those companies that I have enumerated, including Atlantic Metal, who else was there in the Hollow Metal Door and Buck Association, to your knowl-

edge, that employed people who would normally be within the unit coverage claimed by Local 66?

A. Only one other one.

Q. Which was that?

A. Superior of College Point.

Q. You had discussed Superior of College Point's position with Mr. Raimist and indicated if a deal was made they would come in, too?

A. They would be part of it, too.

Q. They are the Superior Steel Door and Trim Company, Inc.?

A. Yes.

Mr. Raphael: The reason they are called Superior of College Point is that there is a Superior Fire Proof Door and Sash Company and they are in the Bronx. To eliminate confusion in the industry, one is referred to as Superior of the Bronx and the other is referred to as Superior of College Point.

[fol. 642] Cross-examination.

By Mr. Weissman:

Q. Mr. Finkel, is there a company in the association known as Acme Dorf?

[779] A. Acme and Dorf.

Q. Do they employ this type of personnel?

A. According to Mr. Dorf, they do not. The only one that does any drafting work is his son.

Q. So that to your knowledge they would not be included?

A. That is right. I have heard Mr. Dorf make that statement many times.

Q. May I have your August 30th notes, please?

Mr. Raphael: We have a copy of them here.

Mr. Weissman: May I have a copy?

Mr. Raphael: I don't know whether these are in.

Trial Examiner: August 30th?

Mr. Raphael: Yes. I know we spoke about offering something.

Trial Examiner: They are identified only, as General Counsel's 40.

Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

By Mr. Weissman:

Q. I refer you to the recognition clause, which is A, and I will read it to you. "As to this item the parties agreed after a discussion to recognize the union as the bargaining agent on an industry-wide basis for those shops where they had won the election and had been certified by the Board."

[780] Is that your recollection of what was stated at the meeting?

A. Yes.

Q. Mr. Finkel, with respect to the August 30th minutes, as you have described the minutes of meeting *re* Hollow Metal Door, are these your notes of the August 30th meeting?

A. These are Mr. Raphael's notes.

Q. You got them from Mr. Raphael?

A. That's right.

[fol. 643] Q. Do you have any notes of your own on the August 30th meeting?

A. The only other notes that there possibly might be were not really my notes. They were notes kept by Sam Mittleman, which he asked me to hold on to these sheets for him. I don't think I kept any notes personally myself.

Q. When you testified yesterday under direct examination, were you referring to Mittleman's notes?

A. No.

Q. Just to the notes that Mr. Raphael drew up?

A. That's right. I don't understand Mr. Mittleman's notes.

Q. Do you have any knowledge whether Mr. Raphael supplied these notes to Local 66?

A. Do I have any knowledge that he supplied it?

Q. Yes.

A. I do not know whether he supplied it.

[781] Q. All you know is whether you received a copy of it?

A. That's right.

Q. Mr. Finkel, on your direct examination you stated that you had met with an Examiner of this Board, Mr. Levy, on two occasions. Is that correct?

A. I don't think I said two occasions.

Q. How many times did you meet with him?

A. I met him that one day.

Q. Just on one occasion?

A. Yes.

Q. Could you recall how long you spent with Mr. Levy at that time?

A. A good part of the day.

Q. A good part of the day?

A. Yes.

Q. You also testified that you thought——

A. Wait. He might have carried over into a second day. He might have carried over. I remember that I took him some time very late in the afternoon over to Hy Drackman in Long Island City. I don't know whether he had finished with the boys on the second or third day, but I think he had me for one day. He had me a pretty long time. Whether he carried over the next morning, I am not sure.

[fol. 644] Q. You testified you thought you signed a statement at that time.

[782] A. I think I did.

Q. Did you ask for a copy of that statement?

A. I asked will I receive a copy of it and he said, "We will see."

Q. Did you receive a copy of it?

A. No.

Q. Have you ever sent a letter to the National Labor Relations Board requesting a copy?

A. I asked Mr. Raphael how I could get a copy of the statement that I made. When this was coming into effect subsequently, I wanted to get a copy of this statement.

Q. Do you know if Mr. Raphael made any request for a copy of your statement?

A. I don't know.

Q. Referring to the August 30th, 1956 meeting, would you again tell us how many holidays the employers offered to Local 66 at that time?

A. Six.

Q. You also denied yesterday that the employers had

offered Mr. Raimist one day per year with a maximum accumulation of twenty days in twenty years. Is that correct?

A. Yes.

Q. Do you have any recollection of making any kind of an offer on sick leave at that meeting?

A. We just agreed to the principle of sick leave, but the [783] formula we had not worked out.

Q. Let me ask you this: You have refreshed your recollection by looking at those notes, the notes of August 30th. The notes of August 30th state what you have just stated on the record; is that correct?

A. Yes.

Q. Without looking at the notes, can you try to refresh your recollection to determine whether there was any kind of an offer made on August 30th?

A. You see, when I received the minutes of this meeting I read it over very carefully myself to see if there was anything I would disagree with or I felt that was not proper, and having gone over it, I would have marked things that I did not agree with or I thought were different, and there were no such markings here.

[fol. 645] Q. Do you think it might refresh your recollection to look at Mr. Mittleman's notes of the August 30th meeting?

A. Are you talking about holidays?

Q. I am talking about sick leave. You look at them and see whether it refreshes your recollection.

A. I will read you Mr. Mittleman's notes. He says, "Sick leave formula to be determined."

Q. He has that there?

A. It is written right here.

Q. May I see it? [784]

A. Yes. It is in Mr. Mittleman's handwriting: "Sick leave formula to be determined."

Mr. Weissman: Mr. Newmark, do you have the letters of August 3rd and August 20th, which were mailed to Mr. Finkel by Mr. Raimist, and I believe which we requested in our subpoena?

Mr. Newmark: You better ask the witness whether he has it. He has a complete folder of letters.

The Witness: August what?

Mr. Weissman: August 3rd and August 20th.

The Witness: I have the 20th.

Mr. Newmark: 1956?

Mr. Weissman: That is correct.

The Witness: I do not have August 3rd. I marked on the subpoena the one I do not have.

By Mr. Weissman:

Q. Can I have the August 20th letter?

Mr. Newmark: I have a copy of it here. Do you want that?

Mr. Weissman: All right.

By Mr. Weissman:

Q. Mr. Finkel, I show you a letter dated August 20th, 1956, signed by J. Lawrence Raimist, and ask you whether this is the letter that you received on or about that date.

[fol. 646] Mr. Weissman: Before I do that, I will ask the reporter to please mark it for identification.

[785] Trial Examiner: 41.

(The document above referred to was marked as General Counsel's Exhibit No. 41 for identification.)

By Mr. Weissman:

Q. Mr. Finkel, is it a fact that this letter requested the employer to supply Mr. Raimist with a list of names of employees in the unit and also classifications and other pertinent material?

A. Yes. He asked for names and rates.

Q. Can you tell us now if this information was supplied?

A. Yes, it was.

Q. Can you tell us the date that this information was supplied?

A. It was supplied twice. First I sent a breakdown on this right after the August 30th meeting to Mr. Raimist. I don't know, but somehow it got misplaced. Then subsequently I sent it again. This time it was given on October 10th, probably after one of the October meetings, to Mr. Raimist and Mr. Rapheal.

Mr. Weissman: I offer this letter in evidence as General Counsel's Exhibit 41.

Trial Examiner: Any objection?

Mr. Newmark: The only objection I have is that it is immaterial. It has been used for the purpose desired and there is no need to clutter up the record. Counsel has [786] referred to the contents of the letter.

Mr. Weissman: Mr. Examiner, I think the letter is pertinent.

Trial Examiner: The objection is overruled. It may be received.

(The document previously marked for identification as General Counsel's Exhibit No. 41 was received in evidence.)

The Witness: Can I explain that letter once more?

[fol. 647] Mr. Weissman: The answer is in.

Trial Examiner: If he wants to add something, all right.

The Witness: The photostat doesn't show anything, but I have a notation which I wrote here. I suppose it was after I gave it to him the second time. It says, "Second time, gave before."

You can see right underneath here it is the second time I gave it on October 10th.

By Mr. Weissman:

Q. You testified you had given a copy to Mr. Raphael?

A. That's right.

Q. And something happened to it.

A. Yes.

Q. Did you also receive a letter on or about August 3rd, 1956 with respect to the same type of information?

A. No, sir.

[787] Q. Have you searched your records?

A. Yes, I did.

Q. And you have not found it?

A. No, sir.

Q. Mr. Finkel, I show you what purports to be a list of employees in the unit under the stationery of Williamsburg Steel Products Company and ask you whether this is the list that was supplied to the union on October 10th, 1956.

Mr. Weissman: Before I do that, I would like to mark it for identification.

Trial Examiner: 42.

(The document above referred to was marked as General Counsel's Exhibit No. 42 for identification.)

By Mr. Weissman:

Q. I show you the list.

A. There seem to be some changes after it was received.

Q. In what respect, Mr. Finkel?

A. Here. There is a line through here and there is no line through my copy (indicating).

There is a line through here and there is no line through my copy (indicating).

[fol. 648] —There is a line through here and and there is no line through my copy (indicating).

There is a line through here and there is no line through my copy (indicating).

[788] There is a line through here and there is no line through my copy (indicating).

There is a line through here and there is no line through my copy (indicating).

There is a line through here and there is no line through my copy (indicating).

Q. Mr. Finkel, with respect to General Counsel's Exhibit 42 for identification, is this the sheet that was given to Mr. Reimist?

A. Is this the sheet that was given to Mr. Raimist?

Q. That is correct.

A. I don't know.

Q. Is it your stationery?

A. It is my stationery.

Q. Does it appear to be——

A. It would appear to be a photostat of the sheet.

Trial Examiner: A photostat? Is that a photostat?

The Witness: Yes.

By Mr. Weissman:

Q. Mr. Finkel, can you determine whether the names that were crossed out which you say do not appear on the original is a photostat or is not?

A. No. The only one that is a photostat is this "out."

This you can see is a photostat. The rest were written in afterwards.

Q. So with respect to McCauley LaRode, the word "out" is [789] the same?

A. That's right. There is no line through it. The line was put in after.

Mr. Weissman: I would like to mark the copy which Mr. Finkel has produced as General Counsel's Exhibit 43 for identification.

(The document above referred to was marked as General Counsel's Exhibit No. 43 for identification.)

Trial Examiner: What is the date of this exhibit?

[fol. 649] Mr. Weissman: There is no date. But the witness testified he gave it to the union on October 10th.

By Mr. Weissman:

Q. Referring to General Counsel's Exhibit 43 for identification, can you tell me whether Mr. Wisniewski's name appears on this list?

A. It does not appear.

Q. Mr. Manzuk?

A. It does not.

Q. Mr. Kline?

A. It does not.

Q. Mr. Brav?

A. It does not.

Q. Mr. Thibou?

A. It does not.

Q. Mr. McCarty?

[790] A. It does not.

Q. Mr. Jacobson?

A. It does not.

Q. Can you tell us, if you know, why these names were missing from this list?

A. I don't know.

Mr. Weissman: I offer both General Counsel's 42 and General Counsel's 43 for identification into evidence.

Trial Examiner: Any objection?

Mr. Newmark: No objection.

Trial Examiner: These may be received.

(The documents previously marked for identification as General Counsel's Exhibits Nos. 42 and 43 were received in evidence.)

Mr. Newmark: In retrospect, may I inquire whether this is within the issues of the case?

Trial Examiner: Well, they are in.

By Mr. Weissman:

Q. Mr. Finkel, did you participate in the representation procedures before the Board prior to the certification of Local 66 with respect to Local 66's petition for an election?

A. Where?

Q. Here, at the National Labor Relations Board.

Mr. Newmark: Can we have the question read?

(Question read.)

[fol. 650] [791] The Witness: You say here?

By Mr. Weissman:

Q. No. 2 Park Avenue.

A. I don't believe I did. I don't recall ever going down there.

Q. Do you recall an election being held on the premises in June of 1956?

A. Yes, I do.

Q. Did you send the National Labor Relations Board the name of an observer at that time?

A. Yes.

Mr. Newmark: I am going to object to this as being irrelevant and immaterial and not a proper subject for cross examination. It was never brought out on direct. We are going afield.

Trial Examiner: I think that objection perhaps is correct. It was not a matter that was brought out on the direct examination. I will allow him to answer the question.

By Mr. Weissman:

Q. The answer is yes?

A. Am I aware of an election?

Q. And also that you had sent the name of an observer for the election to the Board?

A. That is right.

Q. Did you also send a list of eligible voters to the National Labor Relations Board at that time?

A. I don't recall. If it was requested of me, I imagine I [792] did do it. Was it requested of me?

Q. You have no recollection of the list of voters?

Mr. Weissman: Mr. Examiner, at this time, in view of the witness's lack of recollection, I am going to drop that part of the matter and I will not go into it any further.

By Mr. Weissman:

Q. Mr. Finkel, referring to your discussions with Mr. Levy, you state that you signed a statement before Mr. Levy.

A. I said I think I signed it.

Q. You mean you are not quite sure whether you signed it or not?

A. I am pretty sure that I did sign.

[fol. 651] Q. At the same time you state that you have never asked for a copy by letter?

A. I don't recollect. I have no record of ever sending a letter to the National Labor Relations Board requesting that.

Q. To this date, which is right now, you have not made any direct request of this office for a copy of your statement?

A. Other than through Mr. Raphael.

Q. As far as you know, Mr. Raphael has never made a request?

Mr. Raphael: I will object to that as calling for the mental operation of this witness as to what I did.

Mr. Weissman: I think Mr. Examiner, it is important at this time to determine that Mr. Raphael, despite the fact that the witness testified that an affidavit exists, has made [793] no request for an affidavit.

Mr. Raphael: I am going to object to the statement of

counsel. I don't want to get into a harangue with him. Let him try his case in a lawyer-like way. I am not under oath. If he wants me to appear as a witness, he can subpoena me.

Trial Examiner: There is nothing for me to rule on at this point.

By Mr. Weissman:

Once more, it is your recollection—I want you to be absolutely sure—that you signed a statement for Mr. Levy in your office?

Mr. Newmark: He already answered.

Mr. Weissman: I want him to be sure.

Mr. Newmark: He is sure.

Trial Examiner: You may answer the question.

The Witness: I am sure.

Mr. Newmark: May the record show, Mr. Trial Examiner, that General Counsel's Exhibit 1 contains a [fol. 652] request for prehearing statements which was formally made by the attorneys for the respondent, and the request was denied, and this appears as part of the record in the case.

Mr. Weissman: Mr. Examiner, the request that was denied was a request for the statements prior to the hearing. Under the decisions of the Board the request could have been made after testimony by Mr. Finkel on the stand, and the request has not been made.

[794] Is the request being made at this time, Mr. Newmark?

Mr. Raphael: Off the record.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: The proceeding will be in order.

By Mr. Weissman:

Q. Mr. Finkel, when you were talking to Mr. Levy and you say he took a statement from you, did you go through the various bargaining sessions with Mr. Levy?

A. I don't recall what we went through.

Q. You don't recall?

A. No.

Q. You don't recall discussing with Mr. Levy the provisions that were discussed at each bargaining session?

Mr. Raphael: Objected to as already answered.

Trial Examiner: He may answer.

The Witness: No. I don't recall.

By Mr. Weissman:

Q. What did you talk to Mr. Levy about?

A. Mr. Levy came at a very inopportune time, as far as I was concerned. He came immediately after a holiday. He had come in during a day concerned with the payroll. At that time I was very much tied in to the office payroll. [fol. 653] He just botched up my complete day and I was very anxious to dispense with the man and hurriedly had this conference with him, which he kept prolonging and writing and writing and writing. I remember very clearly getting him out of there and bringing [795] him over to Drackman, but what took place exactly at the discussions I don't recall. I know I was very anxious to get back to work.

Q. Do you recall talking to Mr. Levy about a wage announcement which had been made by the Company on April 5, 1957?

A. No.

Q. You have no recollection of that?

A. No.

Q. Do you have any recollection of talking to Mr. Levy about turnover of personnel prior to April 1, 1957, which caused the sage announcement to be made?

A. No.

Q. Do you recall sending a letter to Mr. Levy concerning this subject?

A. No.

Mr. Weissman: May I ask that this September 5, 1957 letter be marked for identification?

Trial Examiner: 44.

(The document above referred to was marked as General Counsel's Exhibit No. 44 for identification.)

By Mr. Weissman:

Q. I show you the letter and ask you whether this is the letter that was sent by you to Mr. Levy.

A. That is my signature.

Q. I refer you to Paragraph 4, which states: "Enclosed [796] please find a list of engineering personnel who left on their own accord from the period July 1, 1956 to April 1, 1957."

Now I ask you whether you had a discussion with Mr. Levy about turnover of personnel prior to April 1, 1957.

Mr. Raphael: I am going to object to the form of the question. The proper question should be: Does this now refresh your recollection that you had such a discussion. That is the proper question.

[fol. 654] Trial Examiner: The objection is overruled. He may answer.

A. I don't recall.

Q. Mr. Finkel, the date of this letter is September 5, 1957. Paragraph 4 refers to a period from July 1, 1956 to April 1, 1957.

Can you think of any reason why you would send a list of names to Mr. Levy which would end on April, 1, 1957?

Mr. Raphael: I am going to object to the form of the question. It is incompetent and immaterial.

Trial Examiner: Overruled.

The Witness: Read back the question, please.

(Question read.)

A. I don't know. That is what Mr. Levy might have requested of me.

Mr. Weissman: At this time, Mr. Examiner, I offer General Counsel's Exhibit 44 for identification into evidence.

[797] Mr. Raphael: Incidentally, I might remark at this point that I think the witness's answer is probably correct, because the beginning of the letter says, "Pursuant to today's meeting the following is the information you have requested," referring to Mr. Sidney Levy.

Mr. Weissman: The letter will speak for itself.

Trial Examiner: Is there any objection?

Mr. Raphael: I want to read it. I want to look at it. I didn't have any foreknowledge that this was coming.

(Short pause.)

I have no objection.

The Witness: He has a third sheet on there that you don't have.

[fol. 655] (Short pause.)

Mr. Raphael: No objection.

Trial Examiner: 44 will be received.

(The document previously marked for identification as General Counsel's Exhibit No. 44 was received in evidence.)

By Mr. Weissman:

Q. Before I leave the discussion that you had with Mr. Levy and the statement that you allegedly signed, could you tell us anything that was discussed at that time between you and Mr. Levy?

A. I don't recall what we discussed. I imagine we discussed Local 66, obviously. I am not going to at this time tell you [798] things that I thought we might have discussed. I just do not recall what we discussed at the time. I didn't keep any notes on the meeting.

As I explained before, I was very, very anxious to satisfy Mr. Levy and please him and give him the information, the answers to the questions he was asking, and I was very concerned to do some work.

Trial Examiner: You did testify that you spent most of the day with him.

The Witness: Yes; I would say a good part of the day.

Trial Examiner: Don't you recall at all what subjects were discussed?

The Witness: We must have discussed 66; the sequence of what we discussed, what we discussed, I don't recall. He had come right after a holiday. I think it was Labor Day.

Trial Examiner: Nevertheless, you did spend time with him. I assume you must have talked and he must have talked. Don't you recall at all what subjects you discussed?

The Witness: The negotiations with Local 66. Specifically, I can't tell you. I just don't know. If I had kept [fol. 656] notes at the meeting or made a record of what transpired, I would recall, but I honestly do not recall.

Trial Examiner: Did you state what your position had been during the negotiations and what the position of the union was?

[799] The Witness: I don't recall. I don't think Mr. Levy proceeded in that tone. I don't recall how we proceeded. I honestly don't remember.

Trial Examiner: What did he say when he first came in? What did he want?

The Witness: He said he wants some information.

Trial Examiner: Then what next? I assume you asked him what information.

The Witness: He said he is from the National Labor Relations Board and he would like some information. He was very quiet. He wasn't too communicative as to what he wanted. I wanted to give him what he was looking for and get rid of him.

Trial Examiner: Were the bargaining negotiations discussed, as to what went on at the negotiations?

The Witness: I don't remember.

Trial Examiner: Did you refer to the notes that you are using here now during the interview with him?

The Witness: I don't think so. I don't think so.

Trial Examiner: Did you refer to any records of the company during your interview with him?

Mr. Weissman: May I ask a question?

The Witness: Yes. I remember one item. The large work sheets. I remember showing that to him.

By Mr. Weissman:

Q. Mr. Finkel, would they refresh your [800] memory? I am reading from General Counsel's Exhibit 44, which you identify as your handwriting, the second paragraph:

"With reference to the August 30th meeting notes that Sidney Raphael sent together with his September 12, 1956 accompanying letter, I spoke to Mr. Raphael about it this [fol. 657] afternoon and he said he would send you a copy of this letter."

Does that refresh your recollection?

A. If it says here, then I suppose I did it, but I don't recall anything about the August 30th meeting.

Q. Mr. Finkel, your memory on other matters has been quite good, and for you suddenly to completely forget everything is rather suspicious.

Mr. Raphael: I am going to object to the question as argumentative.

The Witness: May I answer that?

Mr. Raphael: Please read the question. I will show you how loaded that question is.

Please read the question.

Trial Examiner: There is a certain amount of argument in it, but frankly, I am surprised that this witness cannot remember any of the details or any of the subjects that were discussed.

Mr. Raphael: I am not surprised, because much of the testimony he gave he refreshed his recollection. I wouldn't remember something a year and a half later if you asked me [801] what happened at a meeting. I couldn't tell it to you.

Trial Examiner: I wouldn't expect you to remember everything. After all, here was a conference which he said lasted a good part of the day and he cannot recall a single thing that was discussed.

The Witness: I said I recall we must have discussed in general Local 66 and questions about it, but the specifics I do not recall.

It is very clear as to why one is very clear in my mind and one isn't. When I went to the meetings I kept notes on it and I knew exactly what I was doing and I was following it. I was concentrating and I knew exactly what [fol. 658] I was doing. I was there for a purpose. I kept notes and I followed everything.

Mr. Levy falls in on me at my office and I am bothered —not bothered, but I am concerned with a lot of facets of the business. I think he is going to stay five minutes and I am anxious to get him out and give him what he wants, and he keeps talking to me about this and talks about that and I am very much concerned. My mental attitude is entirely different with one than the other.

If he had said come down to the National Labor Re-

lations Board and then I was quiet and didn't have any pressures or people coming in and asking me questions or other things, perhaps my attitude would be different. But [802] coming in to me directly after a holiday in which payrolls had to be gotten out in the shop and everything else, all in a cramped period of time—as I said, the most vivid thing I remember was taking him over to Hy Drackman's place. I was glad to see him go.

By Mr. Weissman:

Q. You stated you signed a statement. Did you read the statement?

A. I probably just signed it and was glad to get rid of him.

Q. You mean you didn't even read it?

A. I doubt it. I might have glanced at it.

Q. Do you think you glanced at each page?

A. I might have glanced at each page.

Q. Do you think you signed each page?

A. I might have. I don't recall.

Q. Do you think you initialed all the changes?

A. I don't recall.

Q. But you do recall that you sent a letter to Mr. Raphael about it and that you sent a letter to Mr. Levy about it. Now you recall that, isn't that correct?

A. That I sent a letter to Mr. Raphael?

Q. Yes.

Mr. Raphael: "About it"—what do you mean by the word "it"?

By Mr. Weissman:

[fol. 659] Q. About certain information which was [803] to be supplied to Mr. Levy.

Mr. Raphael: I object to the form of the question, because the letter is very specific, saying what was supposed to be furnished.

May I ask through the Trial Examiner, is he referring "it" to something other than specified in General Counsel's Exhibit 44? I want to know whether I should object.

You have a lot of loaded questions in this record.

Mr. Weissman: You come up here and make a lot of noise about various objections and all of it is *is* noise.

Mr. Raphael: I want to know, Mr. Examiner. I object to the form of the question. I don't know what he means by "it."

Mr. Weissman: If Mr. Raphael would object in an orderly manner, there would be no problem.

Mr. Raphael: My objection is on the record.

Trial Examiner: Rephrase your question.

By Mr. Weissman:

Q. Mr. Finkel, your September 5, 1957 letter, which you have identified as bearing your signature, does refer Mr. Levy to August 30th notes and that you had spoken to Mr. Raphael about it and Mr. Raphael was going to send Mr. Levy a copy.

You did have more to do at this meeting with Mr. Levy than just sign the statement. You did other things as well. You sent a letter to Mr. Raphael and you sent a letter to Mr. [804] Levy.

A. I did not send a letter to Mr. Raphael.

Q. Did you send a letter to Mr. Levy.

A. Yes, I did. You said twice I sent a letter to Mr. Raphael. I did not. I spoke to Mr. Raphael.

Q. On the telephone?

A. Yes.

[fol. 660] Q. But you communicated with Mr. Raphael?

A. That's right.

Q. And still you have no recollection of the meeting?

Mr. Raphael: I object to the question again as argumentative.

Trial Examiner: Sustained.

Mr. Weissman: I will not pursue it any further.

By Mr. Weissman:

Q. Referring to your August 30th notes of the August 30th meeting, would you again tell us—because I don't think it is clear on the record—what was discussed with respect to grievance procedure and arbitration?

A. The general proposal was generally agreed to.

Q. Generally agreed to?

A. Generally agreed to. The details, the formula, and the working-out would be left to Mr. Raphael, and I believe Mr. Raimist. We always referred to Raphael and Raimist to work out.

Q. You mean whenever you talked about working out——

[805] A. No. It would be with regard to this particular matter.

Q. Do you have any recollection whether there was any discussion about the August 30th meeting being an informal meeting.

Mr. Raphael: I object to the form of the question. Discussion with whom, and where?

Mr. Weissman: Mr. Examiner, I will withdraw that and rephrase it.

By Mr. Weissman:

Q. Mr. Finkel, at the August 30th meeting, was there any discussion between the employers and Mr. Raimist about the fact that the August 30th meeting was to be considered an informal meeting rather than a formal meeting?

A. It was not.

Q. You say it did not happen?

A. That there was no discussion that there would be an informal meeting.

[fol. 661] Q. Do you recall whether certain employers who were scheduled to come to this meeting failed to appear? Do you have your notes before you?

A. Yes. Yes, two members did not appear.

Q. Does that help you refresh your recollection about the informal or formal nature of the meeting?

A. It was a very, very formal meeting. Mr. Raphael sat at the edge of the table——

Q. I am talking about the discussion.

[806] A. Mr. Raphael mentioned that two members advised him they could not be present, but nevertheless we would proceed anyhow. We did quite a bit of work that day.

Q. Do you have any recollection whether there was any discussion of retroactivity at that meeting?

Mr. Raphael: I object to the form of the question. Retroactivity as to what? I want everything pinpointed.

Mr. Weissman: As to the effective date of the contract.

A. I have no recollection along those lines. I have no recollection. I don't want to say that I don't think it took place, but I don't recall it taking place.

By Mr. Weissman:

Q. You are not quite as sure as to this as you were, say, about the formality or informality of the meeting?

Mr. Raphael: I object to the form of the question. It is argumentative.

Trial Examiner: He indicated he wasn't sure of this as about the others.

By Mr. Weissman:

Q. Would you tell us, with respect to the August 30th meeting, what was discussed concerning minimum rates of pay, job classification and description, and merit increase provisions?

A. We were going to table that for the future.

[fol. 662] Q. Tell me the discussion.

A. As I recall, on his letter, E, F and G, that was an item [807] we had lumped together and we would discuss that in the future, because we could not go through all the other items in the letter and complete that item that day, because that would require meetings in and of themselves.

Q. Was there any discussion about a format for these items being drawn up by Mr. Raphael and Mr. Raimist, or either one?

A. We agreed that something would be done on that and it would be worked out at subsequent meetings, but we didn't do anything definite on that.

Q. With respect to the October 2nd meeting, may I see your notes as to that meeting?

Mr. Weissman: May we go off the record?

Mr. Raphael: Put it all on the record. I want it all on the record.

Mr. Weissman: I am talking about lunch.

Mr. Raphael: I want it all on the record.

Trial Examiner: We will recess in a few more minutes.

Mr. Raimist: May I ask a question about lunch?

Do you want that on the record?

Mr. Raphael: Put everything on the record.

Mr. Weissman: I think it is up to the Trial Examiner to determine.

Trial Examiner: I see no reason to put it on the record. The Board is going to pay for the record.

Off the record.

[807-A] (Discussion off the record.)

Trial Examiner: We will recess until one o'clock.

(Whereupon, at twelve o'clock noon, a recess was taken to one o'clock P. M. of the same day.)

[fol. 663] After recess.

[808] (Whereupon, at 1:00 o'clock P. M., the hearing was resumed, pursuant to the taking of the recess at twelve o'clock noon.)

Trial Examiner London: The proceeding will be in order.

Alfred Finkel, resumed as a witness for and on behalf of the Respondent, and having been previously duly sworn, was examined and testified further as follows:

Cross examination.

By Mr. Weissman: (Continued)

Q. Do you have your notes of the October 2nd, 1956 meeting?

A. Yes, I do.

Q. Can you take them out of your folder so that we can use them? I will be asking for others, so I recommend that you detach them.

A. All right.

Q. Mr. Finkel, with respect to E, F and G, could you tell us again what was decided with respect to those three items?

A. Raimist and Raphael were to work it out, to discuss it at a future time.

Q. They were to work it out?

A. This was the major problem classifications. We didn't know just what we were talking about yet. That was something [809] we would develop in the future.

Q. E, F and G would represent job classification and description, minimum rate of pay and merit increase provisions. That is the July 19th letter.

A. Yes.

Q. Can you tell us whether your notes reflect any discussion of items which would come after "I" on the July 19th letter?

A. No. These notes do not.

Q. So that any testimony you gave with respect to items after "I" for the October 2nd meeting was given from [fol. 664] your own independent recollection and without any reference to these notes?

A. If I gave such, that would be the case.

Q. Can you recall whether there was any discussion of retroactivity or the effective date of a contract at the October 2nd meeting?

A. I don't recall, but I doubt very much whether there were any.

Q. You say you doubt it very much, which means you are not quite sure?

A. No, because if there would have been any discussion along those lines, I would have noted it.

Q. And your notes do not reflect it?

A. That's right.

[810] Q. May I have the notes of the October 10th meeting?

A. There are two sets of notes.

Q. Could I have the notes that you used yesterday when you were testifying?

A. Yes (submitting).

Q. With respect to these notes that we are referring to, the October 10th and October 6th, first of all, are these in your handwriting?

A. Yes.

Q. When you testified with respect to the October 10th

meeting yesterday, you referred to notes that were made on October 6th, 1956?

A. That's right.

Q. Was this meeting on October 6th, 1956 with the union?

A. No.

Q. This was just among the employers themselves?

A. I explained that to you.

Q. Incidentally, referring to the October 2nd notes, were those notes taken at the October 2nd meeting by yourself?

A. Yes. This is my handwriting.

Q. May I see those once more, please?

A. Sure (submitting).

Q. With respect to October 10th, you stated on direct examination that there was some kind of an offer made on severance pay. Can you check your notes and tell me whether [811] this is reflected by the notes on October [fol. 665] 10th, 1956? I am just referring to the October 10th notes.

A. May I explain this to you?

Q. Well, I would ask you first whether it is reflected on your October 10th notes.

A. On this sheet (indicating)?

Q. Yes.

A. Severance?

Q. Severance pay.

A. The only thing I see would be grievance and arbitration.

Q. That would be with respect to the October 10th notes that you took at that meeting?

A. No.

Q. Did you take the notes of the October 10th meeting on this sheet?

A. In conjunction with this plan of offer that we had made up on October 6th. In other words, this was the plan that we had arrived at on October 6th. This is what we had offered, and then there were some supplemental discussions at the actual meeting in addition to this. So all three papers were the basis of the October 10th meeting.

Q. Did you have any writing on this October 6th page which you made on October 10th?

A. Yes.

Q. Would you mind pointing out where? [812]

A. There are the check marks, and then my pencil over here, and then I suppose I started writing this pencilled sheet here.

Q. May I see your October 6th notes?

A. Yes. (submitting).

Q. I note the notes that you made on the October 6th page, which were made on October 10th, were made in pencil. You have a check mark which you identified and also a statement here.

I now refer you to your second page of the October 6th meeting which has a notation "No. 3", and then refers to numbers. Is this the severance arrangement that you had in mind when you testified yesterday?

A. That's right.

Q. Is it true, therefore, that there are no pencil notations anywhere near that paragraph?

[fol. 666] A. Yes; except that I worked with pencil and pen. If you will look at this, there is a "no" in pen which I put in afterwards. I always work with pencil and pen. It is a habit for a long time. Even my notes that I took at this meeting was both in pencil and pen. At these hearings I take it pencil and pen. That is the way I work.

Q. I have no further questions with respect to that point.

A. If you will look at the notes I have taken at these hearings——

[813] Mr. Newmark: You don't have to volunteer.

By Mr. Weissman:

Q. Your attorney will bring out all these facts, I am sure, on redirect.

A. Okay.

Mr. Newmark: Just answer the questions.

By Mr. Weissman:

Q. Mr. Finkel, in checking your notes for October 10th, can you tell whether you have anything reflected as having been discussed before Item "I" of the July 19th, 1956 letter, the October 10th minutes? In other words, was there any discussion reflected in those notes on recognition clause?

A. Yes.

Q. On October 10th?

A. Yes. (indicating).

Q. That is the October 6th.

A. No, October 10th. This was the agenda planned for October 10th. We discussed it and I checked it off.

Q. Referring again to your October 10th minutes, can you determine from your October 10th minutes whether there were any items discussed before item I?

A. Mr. Weissman, you asked me for the minutes pertaining to October 10th. The minutes pertaining to October 10th have to do with both the notes on the October 6th meeting and the October 10th. I could not give you a complete answer unless I had both minutes in front of me, because that is what [814] we used.

Q. Mr. Finkel, referring to your October 10th minutes again—I would appreciate it if you answer my question—[fol. 667] do the October 10th minutes reflect any items prior to "I"?

A. Yes, they do.

Q. Please point to them and show me where.

A. Here (indicating).

Q. I am asking you about the October 10th minutes.

A. Mr. Weissman, if you look up here——

Mr. Weissman: Mr. Examiner, I request the witness answer the question.

Trial Examiner: There is a question of what you mean by the October 10th minutes. Do you mean the sheet headed October 10th?

Mr. Weissman: That is correct. If I haven't made myself clear, I am sorry.

The Witness: I will clarify the situation even a little more to show you what I mean.

If you look at the rest of the writing on this October 6th sheet, you will see that it says October 10th.

Trial Examiner: I don't see anything to be gained by going further with this. The witness apparently said he used the minutes of October 6th, 9th and 10th.

The Witness: They are notes, the 6th and 10th.

Mr. Weissman: When we say "minutes," I think we are [815] all referring to his notes.

Trial Examiner: Of course, yes.

By Mr. Weissman:

Q. Referring to your notes of the October 10th meeting, could you tell me whether seniority was discussed, and if it was, what was discussed?

A. It was definitely discussed.

Q. What was the discussion about?

A. Mr. Raimist said he would want it and we said we definitely would not go along with it.

[fol. 668] Q. You stated yesterday under the item general wage increase that it would be discussed. Could you amplify on that statement?

A. That was to be tied in with classifications. We still were trying to determine what we were talking about, whether we were talking about intermediates, apprentices, juniors, seniors. We had to know what we were talking about. That was all tied in to the same thing.

Q. It is my recollection that yesterday on direct examination you testified that there was an agreement that wages were going to be negotiated separately, on an individual basis.

A. Not at this meeting.

Mr. Newmark: I think if you will pinpoint the meeting, he might have said that.

The Witness: You have your meetings confused.

By Mr. Weissman:

[816] Q. I am not confused. You said with respect to the August 30th meeting there was such a discussion. Am I correct?

A. No, I did not.

Q. Will you tell us what you did say?

A. I said with regard to rates, training program, job classifications, all those items in E, F, and G, general increases. This seemed to be a little premature at this time and we tabled this for the future.

Q. Mr. Finkel, with respect to general wage increases, was there an agreement between yourself and the union that they would be negotiated on an individual basis?

A. At this time?

Q. At any time prior to and including October 10th, 1956.

A. There was no such agreement.

Q. Do you recall making a statement yesterday on direct examination to the effect that there was such an agreement?

A. An agreement? I recall I did make a statement like that, but not at this time.

Q. When was this agreement made?

A. November 1st.

Q. November 1st?

A. 1956, that's right.

[fol. 669] Q. And it is your testimony that prior to November 1st, 1956 there was no agreement between yourself and Mr. Raimist [817] to negotiate wages on an individual basis?

A. There was no such agreement as far as we were concerned, no.

Q. Was there a discussion about it?

A. There might have been some discussions, yes.

Q. And it is your testimony now that you never agreed to it?

A. That's right.

Mr. Weissman: I ask that the reporter mark this for identification.

Trial Examiner: 45.

(The document above referred to was marked as General Counsel's Exhibit 45 for identification.)

By Mr. Weissman:

Q. I show you what purports to be a copy of a letter sent to you by Mr. Raphael dated September 12, 1956, and I ask you whether you recall receiving this letter.

A. No, I do not. I never remember receiving a copy of a letter like this, and I will tell you why. First of all, Raphael never would spell my name "l-e"; that's number one. It is "e-l." Number two, Raphael would never write to me—well, I do not recall receiving this letter.

Mr. Weissman: Mr. Newmark, can we have a stipulation that this letter was sent by Mr. Raphael to Mr. Finkel?

[818] Mr. Newmark: I cannot so stipulate.

Mr. Weissman: You cannot so stipulate?

Mr. Newmark: I have no knowledge of that.

Mr. Weissman: At this time I call upon the respondent to produce the original of this letter.

Trial Examiner: He said they never received it.

Mr. Newmark: If we have anything like it, we will be glad to have it produced. I am looking for a copy of such [fol. 670] a letter. I would suggest the witness look through his folder and see if he can find it. We have nothing to hide, you know.

Mr. Weissman: Can we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

By Mr. Weissman:

Q. Mr. Finkel, you stated that there was discussion about individual bargaining for wages.

A. That's right.

Q. Can you identify the dates when such discussions took place?

A. Mr. Raimist brought that up continuously, but there was no agreement. You asked me if there was any agreement on that.

Q. Now I am asking you whether there was discussion.

A. Yes.

[819] Q. Was there discussion at the August 30th meeting about that?

A. I don't think at that particular meeting. Probably the meeting right after that. There probably was some discussion.

Q. You had received the letters from Mr. Raimist on July 8th, I believe and July 19th, in which he stated in the letters that he was requesting individual bargaining for wages.

Did you reply in any way by letter?

A. July When?

Q. July 8th and July 19th.

A. Didn't I tell you before that I did not have it?

Mr. Newmark: It is the demand letter.

The Witness: I know what you have reference to on

the July 19th letter, but I don't know what you mean by the July 8th letter.

By Mr. Weissman:

Q. With respect to the July 19th letter, did you reply to his request in writing? Did you answer his request for individual bargaining as to wages?

A. No, because in the July 11th letter he asked that we [fol. 671] make arrangements for individual or association-wide bargaining, and so I referred this matter——

Q. May I see that July letter you are referring to?

A. Yes (submitting).

Q. I refer you to the final paragraph of General Counsel's [820] 9:

"Also as per previous discussion and mutual understanding the wage rates and/or increases shall be negotiated on an individual employer basis. We shall appreciate your arranging a conference at a time mutually convenient and as soon as possible to discuss same with you."

A. Mr. Raimist always would have a habit——

Mr. Newmark: If you really want to refresh his recollection, the preceding paragraph should be read.

The Witness: I know.

Mr. Weissman: The witness already testified as to the preceding paragraph. He is now testifying as to the final paragraph.

By Mr. Weissman:

Q. I am asking you whether you replied in writing to that demand in the final paragraph.

A. I referred it to Mr. Raphael.

Q. I also refer you to General Counsel's 44 and refer you to the second paragraph, which is the letter that you signed, and I will read it to you. "With reference to the August 30th meeting notes that Sidney Raphael sent together with the September 12th, 1956 accompanying letter, I spoke to Mr. Raphael about it this afternoon and he said he would send you a copy of this letter."

This letter which I showed you previously, which is a copy, is dated September 12th, 1956. Does that refresh your [821] recollection?

A. That is not what you asked me before. This letter was a confusing letter, because I have a letter like this, [fol. 672] except it is on two pages. You say this is a copy. That is a different story. I have a letter similar to that, but this is not the letter.

Q. Can I see the letter that you have that is similar?

A. Yes. If you had asked for it, I would have been very happy to give it to you.

It is a two-page letter (submitting).

Q. May I refer to you to the second paragraph of that letter and ask you to read it?

A. The third paragraph?

Q. The third paragraph, I am sorry.

(Short pause.)

Does this refresh your recollection about an agreement that you had with Mr. Raimist about individual bargaining for wages?

A. I did not have an agreement and there was no agreement made at that time.

Mr. Weissman: Do I have the permission of the Trial Examiner to substitute this for General Counsel's Exhibit 45 for identification?

Trial Examiner: All right.

Mr. Weissman: I have no objection to using a photostat.

By Mr. Weissman:

[822] Q. Mr. Finkel, this is the letter that you received from Mr. Raphael?

A. Yes.

Mr. Weissman: I offer it in evidence.

Trial Examiner: Referring to 45?

Mr. Weissman: That is correct.

Trial Examiner: Any objection?

Mr. Newmark: I have no objection.

Trial Examiner: It may be received.

(The document previously marked for identification as General Counsel's Exhibit No. 45 was received in evidence.)

By Mr. Weissman:

Q. Mr. Finkel, referring to the October 10th meeting, [fol. 673] you denied yesterday agreeing to any of the General Notes which are enumerated in the July 19th letter. I would like you to look at your notes and at the July 19th letter.

Would you determine whether you agreed to any of them at all? In other words, there are six of them.

A. Where are you? October 10th?

Q. October 10th, that's right.

Let us go down the line with respect to the General Notes. How about number one? Did you say no to number one?

A. You mean at that particular meeting?

Q. That is correct.

[823] A. I don't think we went that far.

Q. I believe in yesterday's testimony you denied that you had agreed to any of the General Notes.

A. That's right.

Q. Is it your testimony that you didn't reach it, or is it your testimony that you denied agreeing to any of them?

A. The answer is that with regard to General Note 1, it is "no"; the answer to General Note 2 is "no"; General Note 3 was changed from 35 to 40; General Note 4 was "no"; General Note 5, employees are to be hired on an hourly basis rather than a weekly basis; and General Note 6, the answer is "no."

Q. Can you tell me whether you are refreshing your recollection from notes or from your own memory of what occurred?

A. Are you talking at this particular meeting.

Q. Yes, at this particular meeting.

Are you now refreshing your recollection from notes, or is this an independent recollection?

Mr. Newmark: It is quite apparent the man is looking at his notes.

Mr. Weissman: He is looking at something which I have never seen before.

The Witness: These are my notes. This is my work sheet.

[fol. 674] Mr. Weissman: I haven't seen that before.

[824] The Witness: Yes, you did. I showed them to you yesterday.

By Mr. Weissman:

Q. Before I asked you for the notes you used on October 10th and you didn't disclose that these were notes you used on October 10th.

Mr. Newmark: Is it proper for the General Counsel to look into papers on his desk without having them marked, just looking at his papers? The witness has been asked questions and he is referring to notes. Now the General Counsel is picking papers up out of his file, holding them in his hands, and in effect accusing the witness of concealing something from him, which is the furthest thing from the truth.

Mr. Weissman: I asked the witness for the notes he used on October 10th. He gave me notes of October 6th and October 10th. He did not give me these. Now he is referring to these.

Mr. Newmark: We have nothing to hide. This man's folder is his own property.

Mr. Weissman: I am not accusing anyone of anything.

Trial Examiner: Go ahead.

By Mr. Weissman:

Q. These are the July 19th proposals of the union. I see there is writing on here. How can you tell from this paper on what day or days you used these particular notes?

[825] A. I can't.

Q. This is in fact an independent recollection of your own, that the General Notes were discussed on that particular day?

A. No.

Q. Will you tell us how you recollect?

A. It is very simple. These were my notes that I actually took at the particular meetings.

[fol. 675] Trial Examiner: When you say "these," you are referring to the papers dated October 6th and October 10th?

The Witness: Yes; whereas this July 19th letter was

something that I used at that meeting and subsequent meetings. I used this as a basis of work sheets rather than keep referring to my previous notes. I kept that at each meeting and kept looking at the same thing. It was like a cumulative work sheet of what we had discussed and then I took independent notes. I couldn't tell you whether I wrote something on this on October 10th or previous meetings.

Trial Examiner: When you say "this," you are referring to what?

The Witness: The July 19th letter. There was the first time I probably started to use this.

Mr. Weissman: General Counsel's 10.

By Mr. Weissman:

Q. So that your October 6th and October 10th sheets, which are marked October 6 and October 10, do [826] not reflect discussion of General Notes, but the work sheet that you state you were using at various meetings does reflect certain discussions?

A. Yes.

Mr. Newmark: "Work sheet" meaning the July 19th letter.

Mr. Weissman: The July 19th letter.

The Witness: Which might have been made at October 10th or subsequent meetings. I cannot tell what date these were made.

By Mr. Weissman:

Q. So that the position you have taken with respect to these General Notes may have occurred on October 10th, October 2nd, October 18th, but you are not quite sure which meeting?

A. They wouldn't be prior to this meeting.

[fol. 676] Q. It might have been later, however?

A. That's right.

Q. Do you know if there was any discussion of retroactivity or the effective date of contract at this October 10th meeting?

Mr. Newmark: I believe we have had that question made and answered.

Mr. Weissman: This meeting?

Mr. Newmark: October 10th?

Mr. Weissman: Yes.

Mr. Newmark: I will withdraw my objection.

[827] A. There was no discussion on retroactivity.

Q. In other words, your notes do not reflect a discussion of retroactivity?

A. That is not what I said. I said there was no discussion.

Q. The next question is, do your notes reflect a discussion on retroactivity?

A. No, they do not.

Q. Referring to your October 18th notes, did you take them at the meeting of October 18th?

A. Yes.

Q. I note on your October 18th notes approximately three-quarters of it is in pencil and at the very end it is in ink. Do you know why there is this variance?

A. Sometimes I grab a pen and sometimes I grab a pencil.

Q. Is it your recollection that these notes done in ink were made at that meeting, also?

A. I would imagine they were probably made at that meeting or immediately thereafter. I would say they were made at that meeting.

Q. You don't seem to be too sure about it.

A. I would say they were. It was just different phases of the meeting. This was the first phase and this was the second phase. Then I went back again and probably summarized it as best as I can. They would be made at that meeting.

Q. Yesterday you testified as to classifications that were [828] offered, minimums and maximums, and you also stated that there was a general wage increase offer, five dollars now and five dollars the second year.

[fol. 677] Would you identify the place on these notes where this is reflected?

A. Right here (indicating).

Q. That would be the part that you just discussed that was in ink?

A. That's right; five dollars now for one year and five

dollars the second year. We were talking of a two-year contract at that time.

Q. Try to recall. Is there any possibility this was done at some other time?

A. No. I will tell you why. You, see this was the first part of the meeting. We went through the July 19th letter again. We discussed it and finally Mr. Raimist said, "Look, this is what we want." As I explained it yesterday, Raimist wants the union shop and he wants this. Then he says he wants one year and maybe he will take two years. This continued.

After a great deal of discussion, this is what it came down to again. A two-year contract, five dollars, five dollars, eight holidays, one percent now welfare, one and-a-half percent in a year from now, and two percent eighteen months from now.

[829] Q. There is a little notation here that says, "Kay omits D.B.". What does that mean?

A. I have been thinking about that for a long time. "Kay" is a girl in my office. "Omit" I understand. What "D.B." means, I dont know. I might have been thinking of Dun and Bradstreet. I don't know.

Q. Is it possible that perhaps this was done in your office, that Kay was a girl——

A. No, no. That was a note that I made that I might have been thinking of at the time.

Q. You think you might have been doodling at the time, in a sense?

A. I am a note-maker. I make notes constantly. I make a note on the nearest piece of paper. It could be an envelope, a back of a piece of paper, a telephone message. I have it on the back of a check. That is probably something to do with Dun and Bradstreet, probably omit Dun [fol. 678] and Bradstreet. I don't know what it means right now.

Q. So it is your testimony that this wage offer was made at this meeting?

A. Yes.

Q. With respect to the progression system that you had offered Mr. Raimist at this meeting that you testified to, was there any progression offered for employees who were making ninety dollars or over?

[830] A. I don't know if we discussed progression as you are asking at that meeting other than with regard to apprentices, that we would give a three-dollars-a-week increase every six months.

Trial Examiner: He is asking you about those that were getting more than ninety.

Is that it?

Mr. Weissman: Yes.

By Mr. Weissman:

Q. Ninety or over.

A. Was there any discussion about that?

Q. Yes. Was there any offer made with respect to those individuals?

A. On behalf of the employers?

Q. That is correct.

A. Tell me what you mean by "progression."

Q. You testified yesterday, I think, that the apprentices, juniors and intermediates would receive automatic increases of three dollars per week each six months.

A. That is not what I said.

Q. Would you tell us exactly what the offer was?

A. At the October 18th meeting?

Q. That is correct.

A. The only automatics would be given to the apprentices, of three dollars a week every six months.

Q. Only to the apprentices?

[831] A. That's right.

Q. What about the others, the juniors and intermediates?

A. That was not discussed at that meeting. It was discussed at the October 24th meeting.

[fol. 679] Q. Nothing for juniors and apprentices at this meeting?

A. That's right.

Q. You say with respect to seniors first class and seniors second class, nothing?

A. The same thing.

Q. How about the general wage increase you claim was offered at that meeting? Was that for everybody?

A. Yes; of course.

Q. Was there any discussion of merit increases at this meeting?

A. No; I don't think so.

Q. Can you tell from your notes what the union's position was with respect to severance pay at this meeting?

A. Notice of lay-off. This was the union's position.

Q. Is there anything there with respect to severance pay?

A. Yes. They wanted one week's notice. I imagine——

Q. Don't imagine. If you don't recall, you don't recall.

A. I don't recall.

Q. Would you go to your October 24th notes?

A. Yes.

Q. May I see them, please.

[832] A. Yes (submitting).

Q. Could you tell us from your October 24th notes whether there was any offer of increases at that meeting?

A. Offer of increases? What kind of increases?

Q. Any kind of increases. Wage increases, whether they be progression increases——

A. We discussed an automatic progression system; the question of whether to automatically move an apprentice into a junior.

Q. Was there any discussion as to figures?

Mr. Newmark: Let him finish.

Mr. Weissman: He is not answering my question.

Mr. Newmark: Let him ask a proper question.

Mr. Weissman: I am not going to belabor the point.

By Mr. Weissman:

Q. Was there any offer of money made on behalf of the employers?

A. A renewed or additional offer?

[fol. 680] Q. Any offer of money on October 24th.

A. It might have been the same offer that was made before.

Q. This is "might." Either you know or you don't know.

A. This was a meeting that ended up very, very late. I cannot answer the question. I don't know.

Q. Do you have any recollection of a discussion concerning retroactivity and the effective date of a contract at this October 24th meeting?

[833] A. Retroactivity and what?

Q. The effective date of the contract.

A. No, I don't.

Q. Could you take your notes out for the November 1st meeting?

A. Yes.

Q. Mr. Finkel, yesterday you testified that Mr. Raimist had agreed to individual negotiations for wages at this conference.

A. No. That is not what I said.

Q. Tell us what you said.

A. I said that we offered to negotiate on an individual shop basis with regard to wages and then go back on an association basis for the balance of the contract.

Q. You stated that Mr. Raimist agreed to this?

Mr. Newmark: Is this something he said yesterday?

Mr. Weissman: This is my recollection of his testimony.

By Mr. Weissman:

Q. Did Mr. Raimist agree to it or didn't he?

A. The only thing I recall after we offered to negotiate on an individual shop basis with regard to wages is that he folded up all his papers and walked out.

Q. Your testimony, then, is that he did not in fact answer your offer at that point?

A. Yes.

[834] Q. So that any testimony you might have given yesterday that he accepted your offer is not accurate?

A. No.

[fol. 681] Mr. Newmark: He doesn't recall what the testimony was yesterday.

The Witness: I don't recall what I said yesterday. I didn't get much sleep last night.

By Mr. Weissman:

Q. Referring to your notes of the March 29th meeting, do you have the notes that you made of that meeting?

A. Yes (submitting).

Q. I note from the papers that you just handed me that you were asked to come to this meeting by the New York State Board of Mediation.

A. That's right.

Q. I also note that there is a contract which has been, I think, placed in evidence as proposals which are similar to the Aetna contract.

A. Yes.

Q. Do you recall, when you arrived at the March 29th meeting, whether you were placed first in individual, separate rooms or whether you were all together in one room?

Mr. Newmark: If it happened.

Mr. Weissman: The witness can answer.

Mr. Newmark: As I recall the testimony, they were put [835] in separate rooms at some subsequent meetings.

Trial Examiner: He is asking whether they were separately or together at the beginning of the meeting.

The Witness: As I best recall, we first met together and we went separately and then I think we went together again.

By Mr. Weissman:

Q. Do you recall whether this copy of the proposals was given to you by Mr. Gamser?

A. I think it was given to me by Mr. Raimist.

Q. That is your best recollection?

A. Yes.

Q. I note that this copy of Respondent's Exhibit 2 is marked with various notes that I assume are in your handwriting.

A. Yes.

[fol. 682] Q. Do you recall whether you discussed the various provisions of that contract with Mr. Gamser separately or whether these discussions were carried on while Mr. Raimist was in the room?

A. Both.

Q. Can you recall which ones were discussed with Mr. Gamser and which ones were discussed with Mr. Raimist?

A. You are asking for a pattern of sequence of a series of meetings at the Mediation Board that took place. It is difficult for me to remember a definite and certain sequence. [836] I wouldn't want to tell you a definite answer unless I am positive of the answer.

My best recollection of this is that we first met in a

group and then we adjourned to one of the small side rooms and we discussed this and Mr. Gamser came in for a few minutes and came out and then we started saying why we can't accept this and then we started to talk on some of the items. As I recall, in caucus, so to speak, we said we were going to talk generally about it.

I enumerated one, two, three and four, how we were going to talk about it and what we were going to talk about. Then we went back with Mr. Raimist and then we went through this whole thing.

Q. Will you refer to your notes of the April 4th meeting?

A. Yes (submitting).

Q. I note Page 2 is dated April 11th.

A. I might have taken that out on April 11th and referred to it, because it follows the same way: 4, 5, 7 and 8.

Q. You testify these two pages were of the April 4th meeting, but you might have used it again on April 11th?

A. That's right.

Q. What I would like to know, Mr. Finkel, is the exact wage offer that was made by the company on April 4th.

A. There were two offers made at the time. The first offer was a $7.50 package to include all fringe benefits for the [837] first year. Then subsequently we changed that to $7.50 across the board.

[fol. 683] Q. This was at the same meeting?

A. Yes.

Q. Anything else?

A. As far as the wage offer?

Q. That is correct.

A. We spoke of automatic up to ninety dollars. The wage offer was $7.50.

Q. Was there anything stated with respect to the automatic increases, as to how much they would be?

A. At that time, no. We just presumed it probably was just the same three dollars that we had offered going back originally. That was not discussed at the time.

Q. To be more specific, did you refer back to the October 18th meeting for the three-dollars progression?

A. Probably not, but it was in our minds.

Q. I am more interested in what you said rather than what was in your mind.

A. Your question was——

Q. Did you state that the automatic progression was going to be "X" dollars?

A. No.

Q. Did you refer to some other period and say the automatic progression would be the same as we offered on another date?

[838] A. We just said that there would be automatic increases up to ninety dollars.

Q. Without any definite amount being stated?

A. That's right. We also offered a five-dollar increase the second year and five-dollar increase for the third year.

Q. Was this in the nature of a progression or in the nature of a general increase for the first year and the second year? In other words, was it across the board?

A. That's right.

Q. The same as the $7.50 you say you offered?

A. That's right.

Q. With respect to this April 4th meeting, when you first arrived at the New York State Mediation Board—which is located where?

A. Downtown, City Hall.

Q. Do you know the address?

Trial Examiner: Does it make any difference?

Mr. Weissman: I would like to test his recollection.

[fol. 684] Trial Examiner: Please continue.

By Mr. Weissman:

Q. When you first got to the State Mediation Board, did you come together in one room or did you go into separate rooms?

A. We went into separate rooms.

Q. Tell us what happened in the separate room where you were located.

[839] Trial Examiner: Let us take a recess.

(Recess taken.)

Trial Examiner: On the record.

Mr. Reporter, will you read the pending question, please?

(Question read.)

The Witness: There was a caucus and an offer was tendered to Mr. Gamser. There were the questions of no retroactive, $7.50 package to include all fringes; the question of vacations, and a three-year contract, with the five dollars increase for the second year and five dollars increase for the third year.

By Mr. Weissman:

Q. Then what did Mr. Gamser do? Did he leave the room? Did he go out?

A. He might have left the room and spoken to Mr. Raimist and then brought us together. The actual detail is hard for me to really answer you.

Q. So that he might have gone out and gone to Mr. Raimist. Do you have any recollection of his coming back and asking you for your offer on other provisions?

See whether you can recall whether he came back on another occasion.

A. I can't give you an honest answer on that.

[fol. 685] Q. Can you recall any meeting at the New York State Board of Mediation where the parties were kept in separate rooms [840] and did not meet, any meeting?

A. No.

Q. You cannot recall?

A. No. We always eventually got face to face.

Q. You testified yesterday about the fact that you left that meeting with Mr. Gamser's approval. Could you tell us exactly where you were at the time that Mr. Gamser gave you this approval and who was there, who was present at that time?

A. Yes. We had the employer meeting before. We went back into the large conference room, the hearing room I think it was called at the time, and then followed a lot of discussion, a lot of items that were discussed. Then Mr. Gamser put us in separate rooms again. It was pretty late in the afternoon and he excused us, I believe. I had a note on that.

Q. Where did you make the note?

A. Respondent's Exhibit 3 and General Counsel's 29.

Q. You have this note here that you described on the left-hand side of the page?

A. Yes.

Q. Read it.

A. I said, "Not so. Gamser told us to leave."

Q. At the time you received this permission to leave, you were with Gamser in a separate room?

A. I can't tell you that. I can't say yes or no. There [841] were large hearing rooms. We might have adjourned at the corner.

Q. Was Mr. Raimist and his committee with you at the time Mr. Gamser told you to leave or excused you?

A. You mean physically, as we are?

Q. Yes.

A. No.

Q. Do you have the notes of the April 11th meeting?

A. Yes (submitting).

Q. I don't recall if you testified how this April 11th meeting was called. Do you remember who called the meet- [fol. 686] ing?

A. I think this was agreed on between Mr. Gamser and Mr. Raphael that we continue to make efforts to reach some sort of an agreement.

Q. Was this agreement made at the April 4th meeting, do you know?

A. I don't think so. It might have been made the next day or thereabouts.

Q. With respect to the May 1st meeting, may I have your notes on that?

A. Yes (submitting).

Q. Is this the meeting, Mr. Finkel, where the employers agreed to provide a written counter-proposal, on May 8th, I believe it was?

A. Yes.

[842] Q. Would you please refer to your minutes of the May 13th meeting?

A. Yes.

Q. With respect to arbitration, Mr. Finkel, is it true that at this meeting Mr. Raimist took the position that Local 66 wanted to use the New York State Board of Mediation?

A. That's right.

Q. Mr. Finkel, during any of the negotiating meetings starting with August 30th and ending May 13th, did the company ever make any offer of a pension system to the union?

A. Did the association ever make any?

Q. You are calling it an association. I am calling it the employers.

A. Did the employers as a group ever make any?

Q. That is correct.

A. No.

Q. Mr. Finkel, as a representative of Williamsburg, did your company individually ever make an offer of a pension system to Local 66?

A. We never offered anything individually to Local 66.

Mr. Weissman: No further questions.

Mr. Raphael: No questions.

(Witness excused.)

Trial Examiner: Does the respondent rest?

Mr. Raphael: The respondent rests.

[fol. 687] [843] I understand there is to be rebuttal. I will hold my motions.

Mr. Weissman: Mr. Raimist, will you take the stand?

J. Lawrence Raimist, called as a witness by and on behalf of the General Counsel in rebuttal, and having been previously duly sworn, was examined and testified as follows:

Mr. Weissman: Mr. Newmark, the General Counsel subpoenaed a letter dated August 3, 1956, sent by J. Lawrence Raimist, Business Manager, to Williamsburg Steel Products Company, Inc.

Do you have that letter?

Mr. Newmark: I do not have it. I have looked through my files for this record and I do not have it.

Mr. Raphael: The letter is August 3rd?

Mr. Weissman: Yes.

Would the reporter please mark this for identification?

Trial Examiner: 46.

(The document above referred to was marked as General Counsel's Exhibit No. 46 for identification.)

Mr. Weissman: For the purpose of identifying it, it is dated August 3, 1956. It is purportedly a carbon copy of a letter signed by J. Lawrence Raimist and sent to Williamsburg Steel Products, Inc.

[844] Further direct examination.

By Mr. Weissman:

Q. I show you General Counsel's Exhibit 46 for identification and ask you whether you can identify this.

A. I can.

[fol. 688] Q. Will you tell us whether that is a letter which was mailed from your office on August 3rd, 1956 under your signature to Williamsburg Steel Products, Inc.?

A. This is the original copy, one of the copies, the other copy being mailed to Attorney Raphael for the company.

Q. Did you sign this letter before it was mailed?

A. I do not recall whether I signed it or whether I had my secretary sign it and I initialled it, because my secretary has the power or authority to sign anything that I have dictated.

Q. Do you recall whether this letter was mailed by you from your office to Williamsburg?

A. It was mailed.

Mr. Raphael: I move to strike the answer as irresponsive.

By Mr. Weissman:

Q. Was it mailed by you, Mr. Raimist?

A. I mail no letters. My secretary mails all my letters.

Q. Do you recall dictating this letter?

A. I absolutely did. An identical letter was sent to all the other companies.

[845] Mr. Raphael: I am going to move to strike that as irresponsive. It doesn't answer a question. It is a gratuitous statement.

Trial Examiner: It is not responsive.

Mr. Weissman: I will offer this in evidence.

Mr. Raphael: Objected to on the ground that no proper foundation has been laid.

Trial Examiner: Did you receive such a letter, Mr. Raphael?

Mr. Raphael: We did not. If we had, there would be no problem.

Trial Examiner: I don't think you have laid a foundation for it.

[fol. 689] Mr. Weissman: I think you are right. The question is, bringing in the secretary.

Off the record.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Anything further?

Mr. Weissman: My offer is rejected?

Trial Examiner: Yes.

(The document previously marked for identification as General Counsel's Exhibit No. 46 was rejected.)

By Mr. Weissman:

[846] Q. Mr. Raimist, referring to the August 30th meeting, could you tell the Trial Examiner the items—and you can refer to your July 19th letter—which were discussed at the August 30th meeting?

Mr. Raphael: Objected to as not being proper rebuttal. This has all been reviewed by this witness. The same question was asked and answered in the direct examination. He has a right on rebuttal to refute specific statements made by a witness.

Trial Examiner: Yes. Didn't you cover that pretty thoroughly when he was on the stand on direct?

Mr. Weissman: Mr. Examiner, my recollection is that at all the meetings that Mr. Raimist testified about we confined ourselves to three or four subjects. One had to with the merit increases, classifications, sick leave, General Notes. We made an attempt to confine ourselves to those items.

Trial Examiner: It will probably take more time to argue its admissibility.

Go ahead and answer it.

[fol. 690] The Witness: May I ask a question.

Do you want me to read each name or just the item by reference?

By Mr. Weissman:

Q. Mr. Raimist, I think that you can just refer to the letters, and I think that that would be sufficient at this point.

[847] A. At the August 30th meeting, Items A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W and X were discussed. However, the first item of discussion was an opening request by me regarding retroactivity or effective date of agreement, and it was suggested that we hold that in abeyance.

Q. That was my second question, but it has been answered.

Mr. Raphael: Read the last part of that answer back, please.

(Record read.)

By Mr. Weissman:

Q. So that any of the items that follow "X", which would include Y and Z-1, 2 and 3, and the General Notes were not discussed at this meeting?

A. No. As I previously stated, this was an informal meeting.

Q. With respect to the October 2nd meeting, can you tell us what items were discussed?

A. Items A, B, C, D, E, F, G, H, I, and the retroactivity.

I want to clarify something, because in these discussions where you have the E, F and G, somewheres later in the July 19th letter we refer to apprenticeship training. Apprenticeship training has always been discussed in connection with Items E, F and G.

Q. So that including apprenticeship training, the items you discussed on October 2nd run from A to I. What was the [848] discussion with respect to retroactivity?

A. We were told that the employers expected to discuss this amongst themselves and promised us an answer next week.

[fol. 691] Q. Referring to the October 10th meeting——

Mr. Raphael: Are we going to take up all these meetings all over again? This man was on the stand on direct examination.

Mr. Weissman: I am attempting to short-cut this.

Trial Examiner: One at a time.

Mr. Raphael: I object. This is not proper rebuttal.

Mr. Weissman: In our direct case we confined ourselves to certain items. It was my hope that the entire testimony would be confined to those items. Mr. Raphael in his case has opened up all the items. At this point I have no alternative but to at least go through certain aspects of this thing. I am trying my best to limit myself without going into too much detail.

Trial Examiner: Objection overruled.

A. At this meeting we started off with Item I, repeating I, which was discussed at the October 2nd, 1956 meeting. Then we had I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X——

Mr. Raphael: What is the witness reading from. Can we identify it for the record?

The Witness: General Counsel's Exhibit 13, my notes of the October 10th meeting.

By Mr. Weissman:

[849] Q. Continue, please, Mr. Raimist.

A. I don't like anybody looking over my shoulder.

Trial Examiner: Mr. Weissman was allowed to do that. Go ahead.

The Witness: Y; and I have a specific note, "By individual companies."

The next item was Z, Z-1; then General Notes, with the exception previously noted, thirty-five, and the retroactivity they will tell us next week.

By Mr. Weissman:

[fol. 692] Q. I don't want to summarize too much, but with respect to retroactivity they told you it was going to be next week again?

A. Again.

Q. Do your notes reflect any offer of eight holidays after the second year and third year of the contract?

A. Holidays is Item H. It was not discussed at this meeting.

Q. Do your notes reflect any offer made by employers with respect to severance pay?

A. On October 10th?

Q. That is correct.

A. Notice of lay-off.

Q. Was there any offer of severance pay?

A. No; offering notice of lay-off.

Q. Was there any offer of welfare at this conference?

[850] A. It was held open.

Q. It was held open?

A. My notes so show.

Q. Do you have any specific item there where the company offers specific amounts of money for welfare?

A. No. The general discussion was what did we mean by welfare, what kind of thing, and we should get together and discuss the thing.

Q. Proceeding to the October 18th meeting, can you tell us the items that were discussed on October 18th?

A. My notes indicate as follows: See Sheet A, which is attached to my notes, for comments by Mr. Graine speaking for association committee.

You just want the items discussed?

Q. Just the items.

A. I have a check next to recognition clause Item A; Item D; Item E I have other notes; E, F and G; seven paid holidays.

Q. That would be item H?

A. H. Vacations was discussed.

Q. That is I?

A. Yes. Sick leave, M; bulletin boards, N; Item R, S, T, U, V, W, X, Z, Z1, Z2, Z3; Z4. That is all I have on those attached sheets.

Then the classifications offer were, the titles were [851] apprentice, junior——

Q. We have listed those.

[fol. 693] With respect to E, F and G, was there discussion of E, F and G?

A. In that those classifications were offered, and rate rangers.

Q. That was part of your E, F and G.

Can you tell me whether at this conference the com-

pany offered a five-dollar increase now and a five-dollar increase the second year of a contract?

A. No.

Q. No what?

A. They did not offer. They offered three dollars every six months to be given to men within the classifications, with the understanding that when the man reaches the top of any classification it is management's prerogative to advance him beyond that.

Q. But with respect to a general increase, was there any general increase offered at this meeting?

A. Only in the form of this three dollars.

Q. Do your notes reflect that the union offered to compromise with respect to holidays at this meeting?

A. The answer is yes.

Trial Examiner: I suppose what we are interested in here is not what the notes reflect. I suppose we are trying [852] to find out what his version of the negotiations were.

Mr. Weissman: His memory, yes.

By Mr. Weissman:

Q. Can you tell us what your recollection is with respect to holidays?

A. My notes indicate my recollection, both, that the offer——

Q. Give us your recollection, after examining your notes, with respect to holidays. You can look at your notes and give us your recollection.

A. In respect to the holidays, we suggested a compromise of nine days. Since we had asked for eleven and the company had finally come up to offering seven, we suggested a compromise of nine.

Q. How about the pension plan? What was the company's position as to pension plan at this meeting?

A. In order to show good faith and a desire to bargain, [fol. 694] we withdrew pension and said we would only ask for welfare at this meeting.

Q. Was there any discussion of retroactivity at this meeting, Mr. Raimist?

A. We were promised to positively tell us next week.

Q. This was about the third or fourth time?

Mr. Raphael: I object to the question.

Mr. Weissman: I am perfectly willing to withdraw that.

Trial Examiner: All right.

By Mr. Weissman:

Q. I refer you to the October 24, 1956 [853] meeting. This is a meeting which you did not testify about, as I recall, on your direct examination.

Can you tell us, after examining your notes, what your recollection is with respect to this meeting?

Mr. Weissman: Incidentally, I would like at this time to mark this for identification.

Trial Examiner: That will be 47.

(The document above referred to was marked as General Counsel's Exhibit No. 47 for identification.)

By Mr. Weissman:

Q. Would you tell us about the October 24th meeting?

A. At the October 24th meeting, there was considerable discussion as to the various types of classifications tied in with the apprenticeship training program. We were explaining, at least the union explained, that there were two types of classifications. One is the job descriptions and the other is the automatic progressions, which are based on education, experience, or equivalence. To explain these things takes an awfully long time. We spent considerable discussion on this issue.

It was then suggested that I submit something on this question in writing. Then Mr. Graine, who was present at the meeting, suggested that we discuss the question regarding whether this is going to be an association agreement or not, [854] since Mr. Sears and Mr. Finkel at this [fol. 695] point seemed to be in doubt or hesitant or objected or something about that.

There was a little conference amongst the employers by themselves and then we were assured that this was going to be an association agreement. Then Mr. Shaffer stated that as far as he was concerned there would absolutely be no retroactivity.

The employers recessed for a caucus. Upon return, Mr.

Raphael stated that the committee was divided on retroactivity. Mr. Raphael assured us that they will give us a package proposal next week and suggested that the union do the same thing.

That was the end of the October 24th meeting.

Q. Was there any discussion as to the type of package proposal that Mr. Raphael would prepare?

A. No, because generally package proposals are understood in collective bargaining.

Q. Referring to the November 1, 1956 meeting, which is the next one, my recollection, Mr. Raimist, is that you testified about the November 1st meeting in some detail under your direct examination and I don't intend to go over this ground again.

However, when this meeting ended, did you agree in any way to continue separate negotiation for wages at that time?

Mr. Raphael: Let me hear the question.

[855] Mr. Weissman: I will withdraw the question.

By Mr. Weissman:

Q. Mr. Raimist, what did you state to the employers before you left this meeting?

A. Before I left I told them that I would contact each and every one of them and under our National Labor Relations Board certification rights negotiate the full contract with each one separately.

Q. You have previously also testified with respect to attempts to meet with Mr. Finkel, also with respect to [fol. 696] November 14th and November 15th. However, Mr. Halpern has testified in some detail with respect to November 15th since your direct testimony.

Mr. Raimist, I show you Respondent's Exhibit 6, which was identified by Mr. Halpern as certain classifications which he presented to you at the November 15th meeting. I ask you whether you were shown those pages on November 15th.

A. I do not recall seeing them. Mr. Halpern gave me a tissue sheet which had some rates of pay, arranged from minimum to maximum marked on it, two pages.

Trial Examiner: It was not this exhibit?
The Witness: Not this exhibit.
Mr. Raphael: What is this exhibit?
Trial Examiner: Respondent's Exhibit 6.

By Mr. Weissman:

Q. Did Mr. Halpern show you any papers at that time?
[856] A. He did.
Q. Can you recall what they look like?
A. They carried certain classifications, certain ideas of classifications, and as I said, a wage range. That is why the arguments were hot and heavy there, because I stated that these classifications were written around the employees' existing salaries instead of reflecting the true classification which would reflect the true description of the job.
Q. Did you show Mr. Halpern any descriptions that you may have had with you at that time?
A. I always carry descriptions, yes.
Q. Just answer the question.

Trial Examiner: Did you show it to him?

The Witness: I am sure I did.

Mr. Raphael: I move to strike out that answer. He was asked whether he did or didn't show it to him. It is a yes or no question.
Trial Examiner: He said he is sure he did.

By Mr. Weissman:

[fol. 697] Q. As to the discussions that took place at this meeting, Mr. Halpern testified that you were excited but that he was not excited. Could you testify in your own opinion whether he was excited or not?
A. I think all four of us present were excited: Mr. Halpern, Mr. Langiulli, Mr. Raphael and myself.
Q. Is it your testimony that Mr. Halpern was excited?
[857] A. Correct.
Q. Refetring to the March 29th meeting, would you take your notes out of that meeting?
A. Yes.
Q. Do you recall at the March 29th meeting whether you

met separately or together when you first got to the New York State Board of Mediation?

Trial Examiner: Let us not waste much time on that. Does it make any difference?

Mr. Raphael: I object to it as immaterial.

Mr. Weissman: You think it is not important?

Trial Examiner: No.

Mr. Weissman: I will withdraw the question.

By Mr. Weissman:

Q. On March 29th, 1957, was there a meeting of the employers and the union in one room at some time during that day?

A. Some time during that day, yes. It started at 12:20. Prior to that the employers and the union were in separate rooms. From 10 to 12:20 we were in separate rooms.

Q. After that you were together in one room?

A. From 12:20 to 1:15, and we recessed for lunch.

Q. When you were together in one room, was there specific discussion as to various provisions of the Aetna-type contract?

Mr. Raphael: I am going to object to the leading of the [858] witness. I don't think that this is proper at this stage of the game. I would even object to him asking what happened at that meeting. We have been through it on direct examination.

[fol. 698] Trial Examiner: This is in rebuttal.

Mr. Raphael: If it is in rebuttal, let him testify what happened.

Trial Examiner: The objection is overruled.

Answer it.

A. Since the union proposals, which were transmitted by the union to Mr. Gamser and he distributed it to the employers, this was the first conference after these proposals, the so-called Aetna reference proposals were available to everybody.

After we met together—I repeated this before; my testimony will be identical—Mr. Finkel stated that he was selected as the spokesman and he stated that Aetna speaks

for itself—do you want me to go ahead? It is on the record.

Trial Examiner: Is it exactly the same thing?
The Witness: It is exactly the same thing.
Mr. Weissman: Then let us leave it go.
That is not for the afternoon.

By Mr. Weissman:

Q. This was in the morning?

A. In the morning. That adjourned at 1:15 P. M.

[859] Q. And then what happened? You came back together in the afternoon?

A. That's right.

Q. What happened in the afternoon?

A. Mr. Raphael said that the whole thing was imponderable, that the highlights of what the company cannot agree include seniority, discharge, money, fringes, job classifications, including automatic progressions. In the fringes were included holidays, that there should be no change, and the vacations should be the same, because that is what the carpenters union has in the shop; and the sick leave and the welfare.

It was also suggested that the union should modify its contract provision proposals, and then the company will start bargaining.

[fol. 699] Q. Anything else?

A. Yes. I gave them until Tuesday to make up their minds regarding individual negotiations and then changed it to Thursday, April 4th, at 2 P. M., at the New York State Board of Mediation.

Q. Was there a meeting on April 4th, 1957?

A. There was.

Q. Specifically referring to the April 4th, 1957 meeting, were you in separate rooms? Was the union in one room and as far as you know the company in another room?

[860] A. We were in separate rooms throughout the day. We never saw the employers.

Q. Was there any time during that day that you were together in one room with the employers?

A. Absolutely and positively not.

Q. Did you ever state to the employers that the Aetna

contract must be the contract that was to be signed because of the "most-favored-nations" clause?

A. Are you talking of this meeting?

Q. At this meeting or the March 29th meeting.

A. No. But I said I would like to see it as a pattern. In fact, I suggested that it was a good idea to use it as a pattern.

Q. Did you ever tell them that they had to take the Aetna contract or else?

A. No, sir.

Q. Did you ever threaten that there would be a strike unless they took the Aetna contract?

A. No. Your question was only in reference to the Aetna contract; right?

Q. That is correct.

With respect to the April 4th meeting, tell us what occurred when you first came to the New York State Board of Mediation.

Mr. Raphael: We went over all of this.

[861] Trial Examiner: You are entitled to rebut anything that came out.

Mr. Weissman: You think this is in addition?

[fol. 700] Trial Examiner: It sounds it. You are entitled to rebut anything the respondent puts in, but not the general narrative of what took place at that meeting.

By Mr. Weissman:

Q. Referring to the April 11th meeting, Mr. Raimist, do you recall telling the employers at the April 11th meeting that if they didn't take the Aetna contract the union would have to go on strike?

A. I never said that, at any conference.

Q. Referring to the May 13th conference, do you recall who suggested arbitration as a solution?

A. I suggested the arbitration. This is not the first time that I suggested arbitration. I did specify——

Trial Examiner: Wait a minute. You have answered the question.

The Witness: Excuse me. I am sorry.

By Mr. Weissman:

Q. Did you specify which organization you would agree to to do the arbitrating?

Mr. Raphael: This is in the case. He said the State Mediation Board.

Mr. Weissman: Off the record.

Trial Examiner: Off the record.

(Discussion off the record.)

[862] Trial Examiner: On the record.

By Mr. Weissman:

Q. Mr. Raimist, with respect to your own background with the union, could you tell us how many contracts you have negotiated over the years?

Mr. Raphael: I object to that as immaterial.

Trial Examiner: Sustained.

Mr. Weissman: Mr. Examiner, there has been testimony in this case which Mr. Raimist has been implied to be difficult, arbitrary, et cetera. I think his background, his experience, and his past record certainly is material at this time.

[fol. 701] Trial Examiner: I am concerned with what went on in this proceeding.

By Mr. Weissman:

Q. Referring back to April 4th, Mr. Raimist, would you give us the wage offer that was made by the employers on April 4th?

A. The wage offer made by the employer was through Mr. Gamser, the State Mediator. We never saw the employers that day.

Q. Just give us the offer that Mr. Gamser made to you on that day.

A. On the three-year-contract basis, the first year $7.50 to include fringes not covered below, and the below covers certain vacation and other items which I will read; and to be effective on April 4th, 1957, or the date of the signing [863] when decision is made; five dollars the first year after that and five dollars a year later. Effective the

second year, however, the general increase is not to apply to those getting ninety dollars a week or over.

In addition, we were later told——

Trial Examiner: At the same meeting?

The Witness: The same day. Excuse me. Let me not confuse you.

Trial Examiner: You said "later." I want to know when you mean by later.

The Witness: Later was after Mr. Gamser completed telling us about the union shop; vacation one week after one year's service, two weeks after two years' service, eleven to fifteen days on a progressive basis—that is after the seventh, eighth, and so forth, year; an annual progression in cash, not in vacation; a temporary period of ninety days in the seniority clause; seniority-plus-ability formula; discharge based on discriminatory action only, otherwise no; and we will work out the classifications; paid holidays, *status quo* of seven except six at Williamsburg; continuation of the present hospitalization payments by those companies who are doing so now only; [fol. 702] a five-day sick leave plan to be worked out; no retroactivity.

I then asked for details—what exhibit is that?

Mr. Raphael: Respondent's Exhibit 2.

[864] The Witness: We asked Mr. Gamser how about answers on the rest of the items, for details. Mr. Gamser went in with the companies again and then brought back answers as we asked for each paragraph of our contract proposal. "See Contract A Attached," which I have attached. "Told separate company bargaining."

Trial Examiner: Who told?

The Witness: Mr. Gamser assured us because we had been asking him.

Then Mr. Gamser went over Respondent's Exhibit 2 with us and we made notations on our copy of each paragraph as to what was okay, what was not, what was to be changed; in other words, a complete report on it.

Then he told us that under Article XII, which is classifications and definitions, minimum rates of pay, that in the titles of the classifications they wanted a new name for junior. They wanted to use the name "intermediate"; that automatic progressions that we had in our proposals

of five dollars every six months would be only up to ninety dollars, and beyond that it would be on the merit review every six months; a minimum of $110 for seniors; a minimum of 90 for juniors, now to be called intermediates.

That was their proposal. Fifty dollars for apprentices. I have a question mark. He had no answer for technical clerks, what the minimum would be; and that the senior [865] specialist, which we had proposed $135, was open. There was no answer on that.

Mr. Raphael: Wasn't this given on direct examination?

Mr. Weissman: No, it was not.

Trial Examiner: Go ahead.

The Witness: I did give on direct examination——

[fol. 703] Trial Examiner: If you gave it on direct examination, don't repeat it.

By Mr. Weissman:

Q. Just tell us what is new.

A. Most of these are different than what had been testified to by others.

Q. With respect to your own testimony on money, if there is anything you have left out with respect to money, tell us that.

Mr. Raphael: He testified to that on direct.

The Witness: That was all that was offered. When we got through we had some more questions. We had other questions, but the employers had already left and Mr. Gamser came back and said he cannot give us any answers.

Mr. Weissman: I have no further questions.

Further Cross-examination.

By Mr. Raphael:

Q. Mr. Raimist, you were asked about a paper which Mr. Halpern showed you and which you testified was dissimilar to Exhibit 6. Do you recall that?

A. That's right.

[866] Q. You testified that this paper which Mr. Halpern showed you and which is not the same as 6 had some

writing on it, or some printed matter on it, other than what is contained on Exhibit 6.

A. No. I testified that there were only two sheets and that there were two figures arranged, from so much to so much. It was contained on two sheets.

Q. Wasn't a copy of that given to you by Mr. Halpern?

A. No. Mr. Halpern told us that he was very sorry, he had to take it back. This was the only copy he had.

Q. As Mr. Halpern was discussing this, did you at any time during that conference have a sheet like that in front of you so that you could follow the conversation?

[fol. 704] A. He let me read it and he let Sid Appel read it and then he let Langiulli read it. Then he took it back.

Q. Did you make a notation of what the rate ranges were that were reflected on this piece of paper? This was quite an important piece of paper.

A. No, we did not make any notations, because Mr. Halpern was not there to negotiate rate ranges with us, but only informally discuss with us to see if we could reach an agreement on what type of classifications, what format of classifications, whether it should be automatic progressions or a job description, which would be better. We discussed both types.

[867] When I saw those rate ranges, I accused him of writing these particular classifications around the existing rates of pay of these employees. One rate sticks in my mind, which is fifty dollars.

Q. Mr. Raimist, do you have any minutes or any notes that were made by you of this particular conference that you had with Mr. Halpern?

A. No. There were no notes made.

Q. I am asking you whether you made any. Yes or no? Did you or didn't you make any?

A. No.

Q. So that is it a fair statement that any testimony you are giving here today, whether you gave it in answer to my questions or in answer to General Counsel's questions, you gave based on your memory as to what you recall as having transpired on that particular day, is that correct, or am I incorrect?

A. You are correct, but that memory was very vivid after the flare-up in your office. You were not present.

Q. You testified in rebuttal here a little while ago in

answer to General Counsel's question concerning this Aetna Steel contract and the "favored-nations" clause and the discussion which you had about it at the April 4th meeting. You testified among other things in response to one of those questions, and I wrote down your exact [fol. 705] terminology, that [868] "You would like to see it as a pattern."

Will you elaborate on that a little bit more, please? Tell us what you meant when you used that particular phrase.

Mr. Weissman: I am going to object to that. What he meant and what he said is two different things. If he wants to ask him what he said, I have no objection.

Trial Examiner: Objection sustained.

By Mr. Raphael:

Q. When you said you wanted to see it as a pattern, did you elaborate on it? Were any questions asked as to what you meant by that phrase? Did anybody at the meeting speak about it?

A. No, not directly; only in a general sense, because Mr. Gamser was still trying to bring us together in a form to see if we can sign an association-wide agreement, which is what we had tried originally. It was understood by everybody what we meant by a pattern.

Mr. Weissman: Mr. Examiner, I would like Mr. Raphael to pinpoint the date that he is discussing at this point.

Mr. Raphael: I said April 4th. You haven't been listening to my questions.

The Witness: April 4th?

Mr. Raphael: That's right.

The Witness: I am sorry; I did not hear April 4th.

Mr. Raphael: You testified to that. I wrote it down.

The Witness: April 4th? No, sir.

[869] Trial Examiner: When was it you talked about this contract serving as a pattern?

The Witness: At the March 29th meeting was when I was asked and that is when I answered. April 4th I did not say it, because at no time were we together. If [fol. 706] I answered anything to the contrary regarding April 4th, I was confused with the dates. I am sorry.

Trial Examiner: Now you say it was March 29th?
The Witness: I did state that. That is right, absolutely.

By Mr. Raphael:

Q. You were asked a rather pointed question by Mr. Weissman on your direct examination in rebuttal about the fact as to whether or not on April 4th you had threatened a strike over the Aetna Steel contract being considered as a form of contract for the industry. Do you remember that question being put to you?

A. No, sir.

Q. And you testified answering that question in the pointed way that it was put that you didn't. I am going to ask you a corollary to that question.

Did you on April 4th at any time during that meeting, either directly to the employers or through the medium of Mr. Gamser, indicate that a strike would be voted if your proposals were not acted upon that day?

A. No to your question as you put it.

[870] Q. Was there some talk about strike on April 4th?

A. Not in the sense that you are asking me the question.

Trial Examiner: He is asking you was strike mentioned during the April 4th conference.

The Witness: Only that if the employees at that night's meeting, we told Mr. Gamser, did not ratify it, and if the employees voted strike, the union would have no choice but to carry out the mandates of its membership.

By Mr. Raphael:

Q. Did you at any time at the meeting subsequent to March 29th, 1957 ever bring in any form of contract or proposals different than those that were contained in Respondent's Exhibit 2?

[fol. 707] Mr. Weissman: Mr. Examiner, I am going to object to that question because it is vague, it is general, and it cannot be answered, in my opinion.

Mr. Raphael: How do you know?

Mr. Weissman: This is my opinion and I have a right to object based on my opinion.

Trial Examiner: Read the question, Mr. Reporter.

(Question read.)

Trial Examiner: The objection is sustained.

I don't see how that is proper cross examination on rebuttal at this time.

Mr. Raphael: He opened up the door on this Aetna Steel contract. He opened up the door to show what his attitude [871] was on the Aetna Steel. It is in evidence.

I want to show, in proof of our position and contrary to what this witness said, that the Aetna Steel contract was not the *causa bellae*, as he would have us believe; that far from that, the fact that he did not at any time digress from that contract or its proposals, and that that remained the basis upon which all future negotiations continued, negatives the answer which this witness gave. In other words, you are dealing here with logical inferences that flow from a man's testimony, and that is my point in introducing this.

Trial Examiner: I don't think the answer to that question would help me solve that problem. I have the picture here as to what went on at all the negotiations. That will definitely guide me.

By Mr. Raphael:

Q. I don't know whether you did or did not testify to this; if you did, just tell me so and I won't talk about it any more.

[fol. 708] Did you testify that you did receive a form of proposed contract which had been prepared by my office at one of the meetings at the State Mediation Board?

Mr. Weissman: I am going to object to that. That is in evidence.

Mr. Raphael: I don't know whether he testified to it. That is the thing I want to know.

[872] Mr. Weissman: The document will speak for itself. There is testimony on the record with respect to that document.

Trial Examiner: It seems to me there is testimony in the record on that.

Mr. Raphael: I don't think he testified.

The Witness: Yes. I received the document. It was sent by hand to my office.

Mr. Raphael: I couldn't remember it, that is all. I don't want to start a world war over this.

By Mr. Raphael:

Q. You testified from your minutes of November 1st at the end of that meeting that you insisted on individual negotiations. Do you recall that testimony? You gave it in rebuttal.

A. I did that, that's right, for every meeting.

Q. What was the employers' response to your request that thenceforth the negotiations proceed on an individual basis?

A. You want me to tell the truth? It isn't fit to print.

Trial Examiner: Just tell us what they said.

The Witness: There was a lot of yelling.

Trial Examiner: Tell us what they said.

The Witness: There was a lot of name-calling and we walked out.

By Mr. Raphael:

Q. Did they reject or accept your proposal, in essence? [fol. 709] I don't care about the dirty names or [873] other things you are talking about.

A. There was no answer. That is why I called them the following day, each one of the employers, and I so have testified previously.

Q. There was no answer you say; is that right?

A. That's right. I wanted to negotiate for the whole contract, not only for wages.

Q. Can I see the exhibit you testified from on the November 1st meeting, please?

Mr. Weissman: My recollection is that it is in evidence.

Mr. Raphael: He has it with him on the stand here.

A. Here it is (indicating).

Q. This is in your handwriting, I take it, is it not?

A. That is correct.

Q. Did you not write in your own hand to practically the physical end of this document, Respondent's 1:

"They"—meaning the employers—"now want to recess the association negotiations and start individual wage negotiations and after that to reconvene on rest of contract"?

Does not that language indicate to your mind, as you sit here on this witness stand, that contrary to your last answer that it was the employers that demanded individual negotiations and not you? Doesn't that indicate that?

A. No. This was only on wages. It say- so. "They now want to recess the association negotiations and start [874] individual wage negotiations and after that then to reconvene."

I said, after we had folded up and got the papers together and walked out, that I want negotiations for the entire contract, including wages, on a company basis, since that is in our right under the certification of the National Labor Relations Board.

[fol. 710] Q. Do you have this last statement you made written into your notes?

A. No. By this time——

Q. Do you have that statement written in there?

A. No. Our papers were folded.

Mr. Raphael: I move to strike that last answer out. I just asked for a yes or no.

Trial Examiner: Read the whole answer.

(Record read.)

Mr. Weissman: I submit that is a perfectly proper answer.

Trial Examiner: The last part about the papers being folded, I don't think that is responsive to the question.

By Mr. Raphael:

Q. In testifying in response to questions about the October 24th meeting, you apparently refreshed your recollection from your handwritten notes which appear to be memoranda of that meeting. Is that correct?

A. That's right.

[875] Q. In the course of your testimony, Mr. Raimist, you made the observation as part of your answer to some

question—the exact one I don't remember—and you said in substance that Mr. Sears and the representatives from Williamsburg Steel got into a fight about something. Do you recall that?

A. I didn't say they got into a fight.

Q. Well, they got into an argument.

A. I did not say that.

Q. Tell us what you said.

A. I said that Mr. Graine suggested that we discuss whether this is an association agreement, since there was opposition or dissension or something from both Mr. Sears and Mr. Finkel. If you will notice, it is right there in the notes.

Q. Do you have anything in here which indicates Mr. Sears and Mr. Finkel had any dissension about that subject?

A. This is just what Mr. Graine told us and I marked it down.

[fol. 711] Q. You have "Graine suggested." But do you have anything in these notes as you read them, and as I read them with you, that indicates that anything about what you said about Sears and Finkel arguing at this point occurring at this meeting?

A. I didn't say they were arguing.

Q. Graine told you about it.

A. Graine told us that. He told us that in a very nice [876] manner, and he said "I think that this is the time for us to find out whether this is association bargaining or it isn't," or words to that effect, and you fellows went in a huddle in a corner at your office and discussed the thing.

Q. Do you see anything contained in your notes about this point identifying Sears and Finkel?

A. Yes. Here (indicating).

Q. "Discussion *re* association agreements, Mr. Sears and Mr. Finkel."

A. It says, "No, Sears and Finkel."

Q. That refreshes your recollection?

A. Yes.

Q. But is it not a fact that after they did caucus the employers they did agree that it would be an association agreement?

A. I so stated. We were assured that it is on an association-wide basis at the October 24th meeting.

Q. So any discussions that were had before about that issue were merged into this final conclusion; is that correct?

Mr. Weissman: I object to that.

Trial Examiner: Sustained.

Mr. Raphael: No further questions.

Mr. Weissman: No further questions.

Trial Examiner: You are excused.

(Witness excused.)

[877] Mr. Newmark: Both sides rest.

COLLOQUY

Trial Examiner: There are some exhibits here I would like to get cleared up that were identified and not offered. I want to know whether that is an oversight or whether you don't intend to offer them.

[fol. 712] The first one is General Counsel's Exhibit 40 and 41. I described them as the notes of the August 30th, 1956 meeting prepared by Mr. Raphael and used by Mr. Finkel in his testimony.

Do you want to offer them? They are only identified.

Mr. Weissman: Mr. Raphael, with respect to the August 30th meeting, could we have a stipulation that this was not sent to Mr. Raimist?

Mr. Raphael: I don't recall.

Did I or didn't I send it to you?

Mr. Raimist: No, you didn't.

Mr. Raphael: Then I will consent to it.

Mr. Weissman: I am not going to offer it.

With respect to General Counsel's Exhibit 47 for identification, I do offer it in evidence at this time.

Trial Examiner: That is Raimist's note of the October 24th meeting.

Mr. Weissman: All the other notes that were offered were rejected and they are in the rejected file. I would have no objection if this would go with the other notes.

[878] Trial Examiner: All right.

Mr. Raphael: I am going to ask you a question you asked me before. You asked me whether I ever gave Mr.

Raimist a copy of the minutes of the meeting of August 30th, 1956.

Did Mr. Raimist ever give me a copy of this?

Mr. Raimist: No.

Mr. Weissman: I don't know.

Mr. Raphael: Did you?

Mr. Raimist: No, sir.

Mr. Raphael: I will object to this.

Trial Examiner: It is rejected.

(The document previously marked for identification as General Counsel's Exhibit No. 47 was rejected.)

Trial Examiner: Respondent's Exhibit 4 is the statement to the Board dated June 10th, 1957, by Raimist.

[fol. 713] Mr. Raphael: That I object to.

Mr. Weissman: It is your exhibit.

Mr. Raphael: I offered it for identification only.

Mr. Weissman: I am not asking you to put it in.

Trial Examiner: Then it is just identified. No offer is made with respect to it.

Respondent's Exhibits 7 and 8, the list of employees who left the respondent's employ in 1957 and 1956 respectively.

[fol. 879] Mr. Raphael: That is in evidence.

Trial Examiner: It is identified only.

Mr. Raphael: I will offer it.

Mr. Weissman: I object to it.

Mr. Raphael: Well, the information is in the record. The data is in the record. The names have been read off, and everything else.

Trial Examiner: Respondent's 7 and 8 will be received in evidence.

(The document previously marked for identification as Respondent's Exhibits Nos. 7 and 8 were received in evidence.)

Trial Examiner: How about Exhibit 10?

Mr. Raphael: I say again it is a composite. The man went over it in great length.

Mr. Weissman: I would agree only to one of these sheets, and that would be Respondent's 10-B. I think that is appropriate because it was the particular sheet I questioned him on as to the July business with Mr. Vaval. Other than that, I don't think it is relevant.

Mr. Raphael: It doesn't make any difference. It is, I think, all relevant, personally.

Trial Examiner: It will be received. That is Respondent's 10-A through D.

[830] (The documents previously marked for identification as Respondent's Exhibits Nos. 10-A, B, C and D, were received in evidence.)

[fol. 714] Trial Examiner: That disposes of all the exhibits.

As you probably know, under the rules of the Board I can only grant you thirty-five days. That is the maximum I can grant under the Board's rules for filing of briefs. Because of the length of the hearing and the time it will take to prepare the record, I think thirty-five days is a reasonable time.

So you will have thirty-five days from today to file briefs with me, and they must be in Washington within thirty-five days.

Mr. Newmark: Since we have an extra seven days in which he might reopen the case, we should have forty-two days.

Trial Examiner: If the case is reopened, it will run thirty-five days from the date it closes.

After I receive your briefs and I study the record, I will file my intermediate report. Of course, a copy of that will be served on you. From that date on, the procedure to be followed before the Board I am sure is familiar to you, and if not, you will find it all in the Board's Rules and Regulations.

Mr. Raphael: I just want to note my motions which I [880-A] made at the end of the Respondent's case. I want to renew them at the end of the whole case.

Trial Examiner: I will take them under advisement and they will be disposed of in my intermediate report.

Is there anything further, gentlemen?

Mr. Raphael: No.

Mr. Weissman: No.

Trial Examiner: The hearing is now closed.

(Whereupon, at 4:05 o'clock p. m., Friday, February 6, 1959, the hearing in the above-entitled matter was closed.)

[fol. 715] GENERAL COUNSEL'S EXHIBIT 19

Williamsburg Steel Products Company
Paidge Ave.
Brooklyn 22, N. Y.

EVergreen 9-5520-1-2

March 22, 1957

Architectural & Engineering Guild-Local 66,
American Federation of Technical Engineers-AFL-CIO,
160 West 44th Street,
New York 36, New York.

Attention: Mr. J. Lawrence Raimist

GENTLEMEN:

We have received your letter dated March 21, 1957 which again is entirely irrelevant to the problem.

It now appears that you wish to confuse the issue as to what belongs in negotiations and what our present rights are. We don't find it worth while wasting any further correspondence with you in order to justify ourselves against more self-serving and recriminating letters which you have ample time to write.

However we do suggest that you be very careful with any statement that you may make that is not true because we will feel obligated to cause you extreme embarrassment unless you can prove them to be true.

We also wish to notify the bargaining agencies e.g. N.L.R.B. and N.Y.S.B.M. that any further letters of this sort that you may write will simply be acknowledged or [fol. 716] disregarded without comment because of their selfish or baiting purposes.

Very truly yours, Williamsburg Steel Products Co.,
Alfred Finkel.

AF: DRZ.
C.C. N.L.R.B., N.Y.S.B.M., S. Raphael.

GENERAL COUNSEL'S EXHIBIT 21

Law Offices
Raphael, Searles, Levin & Vishi,
18 East 41st Street,
New York 17, N. Y.

MUrray Hill 6-4060.

February 5, 1957.

Mr Howard C. Huck, Acting Secretary,
Architectural & Engineering Guild, Local 66,
160 West 44th Street,
New York 36, N.Y.

Re: Williamsburg Steel Products-Local 66

GENTLEMEN:

Your letter of the 26th ult. addressed to our client, Williamsburg Steel Products Co., has been turned over to our office for reply.

[fol. 717] After reviewing this matter fully with the representatives of our client, we believe that you are in error in the assertion that any work was taken from the engineering department, and that a purposeful effort to deprive your members of work was indulged in thereby.

To begin with, the work which you speak about has been for many years done in the shop, and as a matter of fact, it is more convenient to do it in the shop, and the materials for doors are being calculated in the shop and have not become a part of the engineering procedure, in view of the fact that it has been found far simpler to make the calculations in the shop. From time to time a manufacturer will change shop and engineering practices if they make for more efficient and expeditious production, and these of course, as you understand are matters of management, and they are not indulged in for the purpose of depriving any one from any work or creating problems, but rather eliminating problems and streamlining a coordination between the shop and the drafting and engineering departments.

We most certainly disagree with you that there has been any invasion of your bargaining right, and under the circumstances, we must respectfully take exception to your conclusions.

Sincerely yours, Sidney O. Raphael.

SOR:PD

[fol. 718] GENERAL COUNSEL'S EXHIBIT 22

Raimist's Notes

(See opposite page)

[fol. 718a]

gx 22 ad (Jan 1957)

H. M. Industrial Shop
City Steel Tracing
Pencer Washing
Superior

(Regal of Wages)

3/29/57

—— at My State Bd of Med. 10 am.
Mr. Howard Jamsen (med.).

Union + Committee met in separate rooms by Mr. Jamsen instructions

at 12 no Mr. Jamsen called us in joint conference

(Cos- Messrs Graine, Shaw, Seer, Schaefer, Finkle + atty S.O. Raphael).

Mr. A. Finkle - Co said he is elected spokesman stated the Aetna speaks for its self
2) + not with group + their Co's have no interests in common with Aetna
3) also historically - aetna procedures have been different even in the shop, like seniority etc Other working conditions Here are only interested in their own problems not Aetna.
Drastic increase in costs would jeopardize because of the 11 other companies not included in this report.
Want to ... time when they left of one Nov 1/2 hour.

H. M. Industry Stop

Pay 2 days pay

M. R. replied

Seniority discussion

1.15 Pm. Lunch recess

Rafael said
Impossible — highlighted of Co's can't agree
Seniority
Discharge clause
Money
Fringes
Holidays Vacation
Sick leave Welfare
job classifications - incl. auto progressions

Union should modify its demands conduct
Company then
start bargaining.

J. H. R. Give them till Tues to make up their minds + individual negotiations

Then charged till Thurs 4/4/57
at 2 PM at my shop Pay 2 days

[fols. 719-720] GENERAL COUNSEL'S EXHIBIT 26

This Agreement effective between hereinafter referred to as the "Company" and Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, hereinafter referred to as the "Union".

PREAMBLE

The intent and purpose of this agreement is to effectuate the spirit and policies of labor and industry in the promotion of complete industrial stability and harmony between management and labor; to prevent strikes and lockouts; to facilitate amicable adjustment of grievances or disputes between the Company and the Union and its members; to prevent waste, unnecessary and unavoidable tieups and the implications inherent in them with resultant cost and expense to the Company, as well as the loss of wages to the employees; to enable the Company to secure at all times sufficient forces of skilled and semiskilled employees, whom the Union is better equipped to train and supply and who, because of their training, efficiency and qualifications are entitled to more compensation and better working conditions; to provide as far as is reasonably possible for the continuous employment of labor; to assure that employment hereunder shall be in accordance with the conditions and wages herein agreed upon and by reason of this agreement and the purposes as well as the intent thereof to effectuate stable conditions in the industry and make possible fair competition in the industry and yet, at the same time, assure fair wages and proper working conditions to promote further and expand the betterment of the conditions for employees in the industry so as to ultimately attain the highest standards for such employees and better levels of pay and fair working conditions and further, to establish and set up the necessary procedure for an amicable adjustment of all disputes, questions or [fol. 721] differences that may, from time to time, arise between the Company and the Union, so as to fully accomplish the objectives of this agreement.

Declaration of Principles

Both the Company and the Union believe that a uniform agreement, if adopted by the Company and the Union engaged in the manufacture and assembly of hollow metal bucks, hollow metal doors, hollow metal base, trim, etc., whether made of metal, steel or other materials, would further the interests of that industry, and further believe that such an agreement should contain the principles outlined below.

It is understood that the Declaration of Principles herein set forth is a part of this agreement and such principles shall be complied with and shall govern the Company and the Union and the employees covered hereby in the performance of their obligations as conditions of this agreement. The Company and the Union enter into this agreement and agree to carry out, conform to and comply with its terms and provisions, as hereinafter provided and set forth, by reason of the mutual advantages of so doing, and in order to effectuate and provide for the carrying out and putting into effect, during the term hereof, the purposes of this agreement as set forth in the Preamble, covenant and agree:

1. The amount or character of work demanded by the Company or its representatives shall not be unreasonable, nor shall it be restricted by the Union, its representatives, officers or members.

2. There shall be no restriction in respect of the use of machinery, tools and appliances.

3. There shall be no restrictions of the use of any material, raw or manufactured, except prison made. [fol. 722] 4. No person representing the Union, except its business representatives, shall have the right to interview the workmen during working hours. The business representatives shall comply with all general conditions of the plant regarding passes, entrance to be used, etc.

Article I. Intent and Purpose, Definition of Employees & Bargaining Unit

It is the intent and purpose of the parties that this Agreement will promote and improve industrial and economic relationships between the Employees and the Company and to set forth herein the basic agreement covering rates of pay, wages, hours of work and other conditions of employment specifically covered herein, and which will be observed between the parties hereto. The term "Employee" or "Employees" shall mean all those employees who are either draftsmen or listers employed by the Company. Technical employees in the shop belonging to another Union are excluded.

Article II. Recognition

The Company recognizes the Union as the sole and exclusive bargaining agent for all its technical employees including draftsmen, detailers, listers, regardless of title assigned to classifications, but excluding production and maintenance employees, shipping and receiving employees, selling employees, shop clerical employees, office clerical employees, guards, watchmen, and all supervisors as defined in the Act, with respect to rates of pay, wages, hours of work and all other conditions of employment. All employees belonging to another Union are excluded.

[fol. 723] Article III. Conflict With Statutes

It is mutually understood that any provisions of this Agreement which are or may become, in conflict with any mandatory governmental legislation or regulations are inoperative during the effective period of such legislation or regulations. Any such provisions of this Agreement will again become operative immediately upon the repeal or expiration of restricting legislation or regulations.

Article IV. Union Shop

1) The Company agrees to retain in its employ only members of the Union who are in good standing.

2) Upon written request from the Union, the Company agrees to discharge any Employee who does not maintain

good standing membership in the Union. Non-payment of dues shall be the sole reason for the union to make this request.

3) All Employees who are not members of the Union at the time of signing of this agreement, and all new Employees hired by the Company must become members of the Union immediately after they have been in the Company's employ for ninety (90) days.

Article V. Hours of Work and Overtime Pay

The standard work week shall be Monday to Friday, both inclusive, and the standard work day shall be eight (8) consecutive hours excluding the lunch period. An employee shall be paid straight time rates at his regular hourly rate of pay for the first eight (8) hours regularly scheduled to be worked in any work day as above mentioned.

[fol. 724] An employee shall be paid at the rate of one and one-half (1½) times his regular hourly rate of pay for any and all hours worked in excess of eight (8) hours in any work day, for any hours worked after the eight (8) hour period, and for any and all work performed on Saturdays.

Any and all work performed by an employee on holidays or Sunday shall be paid for at the rate of twice the straight time hourly rate.

Article VI. Vacations

Section 1.

Each employee who, prior to June 1st of any year during continuance of this agreement, has been in the employ of the company for the period of time designated hereinafter shall receive a vacation with pay as hereinafter outlined.

Section 2.

All employees on the payroll of the Company as of June 1st, with six months' service or less than one year's service with the Company, shall receive three (3) days vacation with pay consisting of twenty-four (24) hours computed by the employee's average straight time hourly

earnings earned during the three-month period prior to June 1st, which three (3) days vacation pay is to be paid at the time they leave for vacation.

Section 3.

All employees on the payroll of the Company as of June 1st, with one (1) year's service, shall receive one (1) week's vacation with pay, paid at the time that they leave for their vacation, consisting of forty (40) hours, computed at the employee's average straight time hourly earnings earned during the three month period prior to June 1st.

[fol. 725] Section 4.

All employees on the payroll of the Company as of June 1st with three (3) years' service, and less than four (4) years' service, will receive one and one-half (1½) week's vacation, to be paid at the time they leave for their vacation, consisting of sixty (60) hours computed at the employee's average straight time hourly earnings earned during the three month period prior to June 1st.

Section 5.

All employees on the payroll of the Company as of June 1st, with four (4) years' or more service with the Company, shall receive two (2) weeks' vacation, with pay, to be paid at the time they leave for their vacation, consisting of eighty (80) hours computed at the employees' average straight time hourly earnings earned during the three-month period prior to June 1st.

Section 6.

Vacations will, so far as possible, be granted at a time most desired by employees, but the final right to allotment of vacation periods is exclusively reserved to the Company in order to insure orderly business operations.

Section 7.

The Union and the Company agree that their mutual objective is the attainment of maximum production and that in the opinion of Management this vacation program would interfere with the attainment of that objective, at the option of the Company, any eligible employee may be

required to continue work and receive a vacation pay in lieu of actual vacation from work. However, it is the intent that to the greatest degree possible, in management's judgment, eligible employees shall receive the benefits of vacation from work.

Section 8.

Vacations will be granted preferably between June 1st and October 1st. The Company will, so far as operations [fol. 726] and conditions permit, endeavor to comply with the employee's desire as to time of such vacation; however, the Company may designate that vacations be taken during the period of a shutdown or, if in the opinion and judgment of the Company, operating conditions will not permit the granting of vacations, then the employee shall receive vacation pay in lieu thereof in addition to his regular pay.

Section 9.

An employee who has not received, by October 1st of the vacation year, the vacation to which he is entitled shall on the next payday thereafter be paid the vacation pay to which he is entitled.

Section 10.

In computing vacation pay all employees eligible therefor, who have lost their continuity of service due to bona fide illness but who have been employed for at least one (1) year and less than five (5) years will not suffer any loss of break in continuity of employment if such illness be for thirty (30) days or less, and if such employee be employed for five (5) years but less than ten (10) years, such employee shall not suffer any break of continuity of employment for illness which shall not exceed sixty (60) days and, if such employee be in the service of the employer for more than ten (10) years there shall be no break in the continuity of service if the illness mentioned be for less than ninety (90) days duration.

Article VII. Paid Holidays

Section 1.

The following days shall be considered legal holidays upon which days no work shall be performed, and the regular employees who are members of the Union, shall receive the regular day's pay computed at straight time [fol. 727] hourly rates for such holidays unworked by them as follows:

> New Year's Day, Washington's Birthday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas, and two (2) hours on Election Day only for gubernatorial or presidential election (in other words, eight (8) hours of straight time pay will be paid for six (6) hours of work performed on Election Day.)

All employees shall be compensated for holiday pay at the rate of pay for the job classification in which such employee was employed in the week during which the holiday falls, or, in any event, in the four days immediately preceding the said holiday.

Section 2.

In the event that any work be performed on any of the aforementioned holidays the employee shall be paid therefor on the basis of two times the straight time hourly rate.

Section 3.

Should any holiday fall on Sunday it shall be observed on the following work day.

Section 4.

To be eligible for holiday pay hereunder, the employee will be required to work at least one (1) day within the week during which the holiday occurs unless he be disabled from employment due to a bona fide illness which shall continue during the week in which the holiday occurs and provided further that he has been in the continuous employ of the employer for at least one (1) year prior to the occurrence of such illness and in which latter event

such employee will receive the holiday pay for the holiday occurring in that period provided that the said illness [fol. 728] is of less than thirty (30) days duration and the holiday occurred during the latter period.

Article VIII. Sick Leave

All employees who have been with the Company for a period of at least six months or longer shall be paid at their regular hourly rate of pay during absence due to illness, total of not exceeding then five (5) days in any calendar year. The employer shall be privileged to verify any illnesses and may demand proof thereof.

The Company reserves the right to investigate any and all absences due to illness.

Sick leave shall not be considered as extra vacation allowance, nor shall it accumulate from year to year. Proof of illness must be submitted.

Article IX. Shop Steward

The Union may appoint one shop steward who shall be in charge of all of the men within the bargaining unit and he shall be permitted to collect union dues on company property for a period not exceeding one (1) hour a month. He shall also be privileged to handle any grievances as they arise herein.

Article X. Seniority

The parties recognize the principle of seniority based on the length of service of an employee in the particular department and/or job classification in which he is employed.

A new employee shall be considered temporary for the first year of employment and shall not have any seniority right at all during such period. If retained thereafter he shall acquire seniority rights effective as of the first day of employment.

[fol. 729] Layoffs and rehiring shall be based on seniority within the given job classification so that employees with the least seniority therein shall be the first laid off in their respective classifications and the last laid off employees shall be the first to be rehired in their respective

classifications, provided, however, that the senior employees shall be able to do the available work.

The Company shall furnish the Union from time to time with an up to date seniority list for all employees on their respective job classifications. An employee must be a member of the Union in good standing and an employee of the company for a continuous period of one year before he can invoke the right of seniority.

In the event of layoff, the parties shall give to each other one (1) week notice of intended layoff or intended quitting of employment by either party to the other, but in the intervening period the employee or employees shall continue to work as though no notice had been given until the actual date of severance of employment. In the event that the employee and/or the Union shall fail to give such notice then any rights accruing to the benefit of the employee shall be waived by such employee in the event that the severance is affected without the giving of the prerequisite notice.

Article XI. Rates of Pay and Job Classifications

The parties recognize that there are two general job classifications, namely listers and draftsmen. Appended hereto is Schedule A, a list of employees and their job classifications indicated for each of them.

The minimum hiring rate for both job classifications shall be $50.00 per week for a forty (40) hour week.

Insofar as the listers and draftsmen are concerned, it is recognized that the long period of time ensues for the development of the prerequisite experience for such em- [fol. 730] ployees, and the parties do hereby establish a rate range with a minimum rate of $50.00 and a maximum rate of $90.00, with automatic progressions to be accorded to the employees within such unit every six (6) months, commencing with the inception of their employment until they shall have, after six (6) years of continuous employment obtained the $90.00 rate. Accordingly, every six months employees within the said job classification shall receive an automatic progression increase in their weekly rate of pay of $5.00 per week.

The parties agree that the Employer shall continue to have the irrefutable right to grant any merit increases

when the employer in its discretion considers it to be advisable, but the same shall not be deemed to create a precedent or an established work condition or a benefit.

Article XII. Management Clause

Section 1.

The management of the operations and directions of the working forces is vested in the Company. Subject to the terms of this agreement, including the grievance procedure and the right of arbitration, the right of the Company is recognized to hire, promote, discharge, transfer, or lay off employees in accordance with the provisions of this Agreement so long as such right is not exercised for the purpose of discriminating against an employee because of membership in the Union or because of Union activities.

Article XIII. Grievance Procedure

During the life of this contract there shall be no strikes, lockouts, sit-downs, work stoppages or work interferences of any kind unless and until there shall have first occurred a full compliance with the grievance procedure as hereinafter set forth.

[fol. 731] However, it is understood that any refusal by an employee of the bargaining unit to cross or violate a picket line lawfully established by and with the consent of the International Union with which the picketing union is affiliated at the factory offices, and established aforementioned by a Union other than a competitive union, shall not constitute a violation of this agreement.

In the event that any disputes, differences or grievances shall arise between the parties during the life of this agreement respecting either the interpretation, performance or breach of this collective agreement or with respect to any of the incidents thereof, that the parties shall attempt to adjust their disputes or grievances as follows:

1) The shop steward shall discuss such grievance with the head of the department and attempt an amicable disposition thereof.

2) Failing in this, the general manager of the plant and a representative of the Union shall attempt to adjust such dispute.

3) In the event that steps 1 and 2 shall prove fruitless, then there shall be a formal grievance meeting between the employees committee which shall not consist of more than two members, and the representatives of the company, to be held in an effort to iron out such disputes or grievances or differences.

4) In the event that steps 1, 2 and 3 shall be fruitless, then the parties agree that they shall submit for arbitration and award the said grievances, disputes or differences, to the American Arbitration Association, through their New York office, and to be processed by the American Arbitration Association, and for a final award to be made therein, and which award when made shall be final and binding on the parties. Unless the parties comply with [fol. 732] the award within not later than five days from the rendition either of the parties shall be free to pursue any rights or remedies they may have, albeit there be any provisions in the contract to the contrary. Payment to American Arbitration Association to be borne by both parties equally.

5) The parties agree that wherever possible they shall at least once every two months during the life of this contract arrange to have meetings between the shop committee and the representatives of the company to discuss any and all problems, work conditions or other matters, pertaining to this collective agreement or the good and welfare of the employees hereunder.

Article XIV. Period of Agreement

This agreement shall continue in full force and effect for a period of three years and thereafter from year to year, unless either party shall notify the other of its desire to terminate or modify the contract, by giving notice at least sixty (60) days prior to the expiration of this agreement, or yearly thereafter on the expiration date, and such notification shall be in writing by registered mail given by either party to the other.

In witness whereof, the parties have duly caused these presents to be executed the day and year first above written.

By:

ARCHITECTURAL AND ENGINEERING GUILD LOCAL 66,
AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO,

By:

[fol. 733] Engineering Department Regulations

1. Hours of work shall be:

7:30 *P.* M. to 12:00 Noon.
12:30 P. M. to 4:00 P. M. Monday through Friday

Management reserves right to change starting and quitting time upon giving proper notification.

2. Tardyness shall be penalized as follows:

15 minutes for 2 to 15 minutes lateness
30 minutes for 16 to 30 minutes lateness.

3. Overtime must be authorized by supervision.
4. After illness or injury of five or more consecutive days' duration, employee must submit doctor's certificate of ability to return to regular job.
5. Supervisor or personnel office must be notified of any absence and reason for such absence.
6. Employee must be at work position at start of shift and at end of lunch period.
7. Employees are expected to conduct themselves in a businesslike and gentlemanly manner.
8. An employee may not refuse to follow instructions or perform designated work, where such instructions on work normally and properly may be required of an employee.
9. An employee will be required at all times to meet a reasonable measure of efficiency and productivity.
10. There shall be no congregating during working hours nor leaving of work stations to line up at timeclock preparatory to quitting time.
11. All employees must punch their own time card when arriving and departing.

[fol. 734] GENERAL COUNSEL'S EXHIBIT 29

Architectural & Engineering Guild—Local 66

AMERICAN FEDERATION OF TECHNICAL ENGINEERS—
AFL-CIO

AMERICAN FED. OF LABOR METAL TRADES DEPT.
160 West 44th Street, New York 36, N. Y.

JUdson 2-4991 or JUdson 2-5050, Extension 112

April 8, 1957
(dictated April 5, 1957)

Mr. Howard Gamser,
New York State Board of Mediation,
270 Broadway,
New York, New York.

Re: City Steel Door Corporation, Pioneer Fireproof Door Corporation, Superior Fireproof Door & Sash Company, Triangle Steel Products Corporation, Williamsburg Steel Products Company.

Dear Mr. Gamser:

This will confirm the telephone message I gave you this morning, and also that I had spoken to Attorney S. O. Raphael representing the above mentioned five Companies.

Last night the employees of the Five Companies, after hearing the Companies counter-proposals, each voted separately, and unanimously rejected the new counter-proposals which were submitted to the Union Committee yesterday through you. The employees were also very much annoyed at the fact that the respective Companies, after giving you the detailed answers to each of the Union proposals for transmission to use at your office, left the premises of the New York State Board of Mediation. In other words, [fol. 735] giving the Union Committee a take it or leave it challenge.

The employees of each of the respective Companies likewise voted strike authority, placing same in the hands of the respective Union Committee and the Business Manager

of the Union to call such strike at any or all of Companies at any time they see fit.

As per your request strike action has been deferred.

As I also mentioned to you over the telephone this morning, most of the employees feel that the Companies' offer would give them less than they have now, meaning that certain benefits would be less than they have been enjoying prior to the Union's appearance. For instance, last night I learned that even the Federal Government established, based on a precedent, that the basic work week at City Steel Door Corporation is a 37½ hour week. Thus under the Companies' offer it means that Companies would take the wage *laws* in addition to other things if they had to work a 40 hour week.

Today, while I was dictating this letter, I was informed that the Chief Engineer at Williamsburg Steel Products Company was going to each employee with a money offer effective immediately. Could this sound to any fair minded individual as bargaining in good faith?

We must insist that since each Company was certified separately by the National Labor Relations Board that we have separate conferences with each Employer, if it is your intention to call any further conferences. You, of course, understand that I want to cooperate as much as [fol. 736] possible with you, however I do have, not only obligations, but certain instruction which it is my duty to follow.

Thanking you for your attention.

Very truly yours, J. Lawrence Raimist, C.E., P.E.,
Business Manager.

JLR:x

CC: City Steel Door Corp., Pioneer Fireproof Door Corp., Superior Fireproof Door & Sash Co., Triangle Steel Products Corp., Williamsburg Steel Products Co., Attorney S. O. Raphael, representing the Companies.

[fol. 737] GENERAL COUNSEL'S EXHIBIT 34

STATE OF NEW YORK,
County of Kings, ss:

HERBERT JACOBSON, being duly sworn, deposes and says:

I live at 150-10-71st Avenue, Flushing 67, N. Y. I am employed by Williamsburg Steel Products Co. as coordinator and assistant to the chief engineer, Ernest Halpern. As coordinator, I deal with customers and try to work out any complaints or difficulties they may have. I also work with the shop and straighten out any problems they have in connection with lists of materials to be fabricated which lists are prepared in our listing department. I set up and distribute work through the department heads to the four departments under Mr. Halpern's jurisdiction. These four departments are: Detailing, Listing, Apartment House Section, and Elevator Department. In the absence of Mr. Halpern I am in charge in his place and I make decisions on the problems the department heads bring to me or I obtain a decision if I do not wish to make it myself. Even when Mr. Halpern is on the job he is frequently not in the office. He spends most of his time in the shop. I establish the priorities of work for the department heads and if they do a job improperly I have the right to call them in and criticize them for their shortcomings. When new men are hired they are interviewed by the department head or if he is busy, by myself. This is particularly true in the case of the listing department with which I am most familiar. Mr. Halpern does the actual hiring and sets the rates after the applicants have been found acceptable by myself or the department head. Halpern reviews the requests of employees for raises and the periodic merits rating of employees. I participate in this reviewing process to the extent that Mr. Halpern asks my opinion about individual employees, particularly in the listing department.

[fol. 738] I am a staff assistant to Mr. Halpern. The line of authority from the draftsman or detailer is first to his department head and then to Mr. Halpern; this is especially true in anything that involves money.

The nature of my position is such that I receive much

confidential information about the business that even the department heads are not aware of. I know what is going on in the front office; the department heads do not.

I voted in the NLRB election and I was challenged by the company as were the department heads and assistant department heads.

Toward the end of July 1957 we announced by word of mouth a meeting of the men to discuss our union problem. The meeting was held in the detailing room. It started on our coffee break which begins before 4:00 P. M. Sid Appel presided at the meeting. Over 40 but under 50 men were present. At this meeting I read to the gathering the entire contract which Sid Appel had drawn up. I read it all including sections dealing with seniority, holidays, vacation, arbitration, pensions, welfare and so on and so forth. After I read the contract, there was some brief discussion and a few questions about it. Appel explained the decertification procedure in accordance with the information he had gotten from the NLRB. There was discussion about resigning from Local 66 and trying to get company agreement to the contract Appel had drawn up. It was decided to conduct a vote among those present to determine if we should resign from Local 66 and it was agreed that the decision of the majority would be binding on all of us. Accordingly, we conducted a secret ballot modelled as closely as possible upon the NLRB election voting procedure. We had a list of names of those eligible to vote. The same persons who were challenged at the NLRB election were challenged again at this election, including myself. A clear majority of those present and voting were in favor of resigning from [fol. 739] Local 66. We never counted the challenged ballots. There was a clear majority without them.

After the vote was announced all those present signed two papers. One paper was a resignation from Local 66 addressed to that union; the other paper was a decertification petition to be sent to NLRB. This meeting then terminated. This meeting lasted about one hour or so. I don't recall exactly how long it lasted. I do not recall whether the men went back to work after this meeting or not.

Mr. Halpern was not present at the meeting. I do not know if he knew about it.

One of the concessions we hope to secure from the company is a pension plan, but neither Mr. Halpern nor Mr. Finkel nor Mr. Katz nor any other representative of management has discussed any particular plan with us nor have any of them told me that we have a better chance to get a pension plan through our own independent organization than through Local 66.

Mr. Halpern and I work in close proximity to each other and we work together functionally speaking. As I stated above I am Mr. Halpern's assistant and right hand man. He has expressed to me his own personal opinion that I am part of management and ought not to belong to the union. He has not in his official capacity or bluntly in so many words said to me that the men could get more money or make a better deal with the company through their own organization, than they could receive through Local 66.

Over a year ago before the NLRB election Mr. Halpern suggested to me that the employees would be better off to form their own organization. But this was a personal remark, not from management through him. At that time [fol. 740] the Carpenters Union was organizing and the men turned to Local 66 as an antidote to the Carpenters, which they did not want.

This statement of six hand written pages is true to the best of my knowledge and belief,

/s/ H. Jacobson.

Subscribed and sworn to before me this 23rd day of September 1957.

/s/ Sidney H. Levy, Examiner.

[fol. 741] GENERAL COUNSEL'S EXHIBIT 35

STATE OF NEW YORK,
County of Kings, ss:

EDWARD WISNIEWSKI, being duly sworn, deposes and says:

I live at 5 Mozart Lane, Bethpage, N. Y. I am employed by Williamsburg Steel Products as chief draftsman in charge of the detailing department. I have about fourteen draftsmen under my supervision at present. I attended the meting held in the engineering department at the end of July 1957, at which a majority of the employees voted to resign from Local 66 and have it decertified. I cast a ballot in this election but my ballot was challenged and set aside and not counted. Before the vote was taken, most of the contract prepared by Sid Appel was read aloud by Herby Jacobson. The meeting lasted about one hour or so. I do not recall now whether this meeting was held during or after working hours. It was announced either by word of mouth or by a written notice, I do not recall which.

As head of the detailing department my supervision relates primarily to what the men put down on paper. I see to it that they do not draw something we cannot make and that they call for the cheapest and most practical item. I do not finally hire or fire employees, but before an employee is hired into my department I interview him and give him a test, and I inform Ernest Halpern, chief engineer, of my opinion and judgment of the man. I give my recommendation as to whether he should be hired. Sometimes my recommendation is followed, sometimes it is not. I know of no instance where I recommended that a man not be hired into my department and he was so hired. Such a man might be hired into some other department of the business. Also Mr. Halpern has interviewed and hired men without previously consulting me.

[fol. 742] With respect to junior employees, Mr. Halpern asks me how they are coming along, and I give him my opinion as to whether they are all right, whether we should give them a longer trial period, or whether they are unsatisfactory and should be let go. Mr. Halpern normally follows my recommendation in these instances, although

sometimes instead of laying off an employee, I have found unsatisfactory, he has placed him in some other department.

I participate with Mr. Halpern in the periodic wage reviews every three and six months to the extent of reviewing and evaluating his work during the period in question. I do not make any direct recommendation as to whether a man should receive a raise. Mr. Halpern makes that decision himself.

Mr. Halpern is my superior. He can and does give me orders and tells me what to do. Herby Jacobson has no such authority. He does not give me any orders or tell me what to do.

This statement of three handwritten pages is true to the best of my knowledge and belief.

/s/ Edward Wisniewski.

Subscribed and sworn to before me this 25th day of September 1957.

/s/ Sidney H. Levy, Examiner.

[fol. 743] General Counsel's Exhibit 41

Architectural & Engineering Guild—Local 66

American Federation of Technical Engineers—A. F. of L.
American Fed. of Labor Metal Trades Dept.

August 20, 1956.

Williamsburg Steel Products, Inc.,
59 Paidge Avenue,
Brooklyn, N. Y.

Gentlemen:

I am very much surprised that we have had no response to our several communications, which among other things includes our request for a list of names of the employees and their rates of pay and their existing classifications, if any, and which are indicated on your adjusting payroll. This list should contain the name of every employee who voted at the National Labor Relations Board Elec-

tion, regardless of whether his vote was challenged by anyone or not, and if any such person's employment has been terminated since the date of the National Labor Relations Board Election, same to be indicated if you please.

As you know, we are entitled to this information under the law. Will you please let us have this by return mail so that we can commence negotiations, particularly regarding the money matters which these lists affect.

Thanking you for your attention.

Very truly yours, J. Lawrence Raimist, Business Manager.

JLR:r.
CC: S. O. Raphael, Esq.

[fol. 744] GENERAL COUNSEL'S EXHIBIT 42

List of Employees

(See opposite page)

[fol. 744a]

Williamsburg Steel Products

COMPANY

[redacted] AVE. . BROOKLYN 22, N. Y. . EVergreen [redacted]

[redacted] IN MAY

[redacted] Filannis	Oscar Goodwin
L. A. Graham	Willie Taylor
Edward Strobleski	[redacted]
Aino Halla	Armando Iacobino
William Singer	[redacted]
Doris Marchwiez	McCauley Lobdo
Vincent Tatar	Ronald Halperin
Fred Bonifrancesi	James Johnstone
Seymour Schonfeld	[redacted]
Roy Elwood	Simon Perrone
John Langullli	[redacted]
Timothy Sose, Jr.	Carmine Mazzaglian
Robert Kyle III	James Maloney
Sidney Appel	Dunsio Calculli
Paul DeStefano	Vesner Vural
Walter Natalia	Stephen Salerno
Mark Orlando	Anthony Mazzaglione
Ferrable Jennings	William Evans
Procorion Arsimos	[redacted]
Charles O'Regan	[redacted]
Robert Chiechetti	

YELLOW POPLAR DOORS AND LOCKS . UNDERWOOD FD AND M. T. CITY LABELLED DOORS AND FRAMES
TUBULAR STAINLESS STEEL AND ALUMINUM DOORS . ELEVATOR CARS ELEVATOR FRONTS

[fols. 745-746] GENERAL COUNSEL'S EXHIBIT 43

List of Employees

(See opposite page)

[fol. 746a]

Williamsburg Steel Products COMPANY

[redacted]

[redacted]

[redacted]

[redacted]

[fols. 747-748] GENERAL COUNSEL'S EXHIBIT 44

Williamsburg Steel Products Company
Paidge Ave., Brooklyn 22, N. Y.
EVergreen 9-5520-1-2

September 5, 1957.

Mr. Sidney Levy,
New York Labor Relations Board,
2 Park Avenue,
New York 16, New York.

DEAR SIR:

Pursuant to today's meeting the following is the information you have requested:

1. The dates of the strike at Pioneer Door was from May 23, 1957 to July 8, 1957.

2. With reference to the August 30th meeting, notes that Sidney Raphael sent together with his September 12, 1956 accompanying letter, I spoke to Mr. Raphael about it this afternoon and he said he would send you a copy of this letter.

3. With regard to the number of people affected by sick-leave I have analyzed the March 3, 1957 payroll and find that there were 52 men in the Raimist unit and 76 men outside the unit covered by the six-leave benefit.

The breakdown for the 76 are as follows:

[fol. 749] Payroll	#3
Stenographers	#5
Billing	#5
Shipping	#4
Switchboard	#2
Filing	#4
Cleaning and Maintenance	#2
Clerical	#4
Bookkeeping	#2
Traffic	#2
Medical	#1
Shop Control	#8
Puchasing	#2
Credits & Collections	#3
Clerical Sales	#2
Erection Control	#7
Departmental Heads	#6
Blue print room	#2
Selling	#12
Total	#76

As far as all sick-leave policies which goes back to September 1948 are concerned, all personnel have been affected by this and the ratios are approximately the same as they are at present, that is 52 inside the unit and 76 outside the unit.

4. Enclosed please find a list of Engineering personnel who left on their own accord from the period of July 1, 1956 to April 1, 1957. Some of these men were excellent workers and which the Company made a tremendous investment in both time, money and effort in breaking these men in.

[fol. 750] If there is any other information you desire, please do not hesitate to contact me.

Very truly yours, Williamsburg Steel Product Co.,
Alfred Finkel.

af; drz
Enclosure

September 5, 1957.

List of Engineering Personnel Who Left on Their Own Accord.

	Left
Paul De. Stefano	12- 7-56
Charles E. Holden	9-14-56
Chris Mercogliano	3-15-57
Stephen Salerno	12- 2-56
Anthony Mercogliano	1-23-57
Danial Sputo	1-30-57
Robert T. Kyle III	5-31-57
McCauley Vernie La Rode	9-23-56
Carmine Macchiaroli	9-16-56
Anthony Marrongiello	1-21-57
Horatio Jennings	1-25-57
Simon Perrone	1-18-57
Edward Luizer	5-17-57

[fol. 751] General Counsel's Exhibit 45

Hollow Metal Door & Buck Ass'n, Inc.
18 East 41st Street
New York 17, N. Y.
Suite 510

MUrray Hill 2-5240

September 12, 1956.

Personal & Confidential
Mr. Alfred Finkle,
59 Paidge Avenue,
Brooklyn, N. Y.

Re: Hollow Metal—Local 66 Negotiations

Dear Alfred:

There is forwarded to you and all persons vitally interested in the negotiations with Local 66, a copy of the Minutes of our sub-committee meeting with the sub-committee of Local 66 held on August 30th, at our office and which represents the first real meeting which we have had with the representatives of Local 66 contemplating an in-

dustry-wide collective agreement covering those employees for whom they were certified.

Please note the part of the Minutes underscored which requires that there be submitted to me the list called for by the said Minutes. As a matter of fact, Mr. Raimist is entitled to this because the order of the Board would require that we furnish him with this information.

May I suggest therefore that you prepare it in triplicate and send it to me as soon as possible and of course, it will be held in the strictest of confidence and you may be sure that its contents will not be divulged to anybody [fol. 752] except Joe Raimist with whom I will discuss each and every individual case separately, and as and when the occasion arises, there will be a meeting held with you concerning your shop and respecting the issue of wages and that will be the only item during our first negotiations as to which there will be individual bargaining respecting the matter of wages. It is hoped that after the first agreement is concluded that following its expiration and if there be a need for further bargaining, it will be on an industrywide basis including all problems, even that of wages.

I have informally had a commitment from Mr. Raimist that we will have a two year agreement with no reopening as our first collective agreement.

If you have any questions concerning the enclosed, please call me. Also please do not forget to forward the data requested as soon as possible.

Sincerely yours, Sidney O. Raphael.

SOR/an
Encl.

RESPONDENT'S EXHIBIT 1

Notes

(See opposite page)

[fol. 752a]

Hill Phila (Tuesday) Dec 8 Dem Assn of Phila
6th Ward at SO Capitol Hill 7th Ward

for Assn. - A. Greiss, S. Matthews, A. Fiddle, SO Capitol

for Union S. Emerson, I. Orrati, S. Appel, R. Kelly, C. Kay, J.L. Feinist
convened at 7:20 PM instead
Assoc. Committee at 7 PM then went
into a caucus to prepare a package
for union (which last week last meeting -
they agreed to have ready for 12/8 to vote).
At 7:20 they added a reference
a cents per hour package to the 3
three 3) items for wage increase
JLL objected — for all employees
They recessed again

They now want to recess
the Assoc. negotiations & start
individual wage negotiations & after
that then to renew on basis
of contract (S Mattle made this
statement

No effective date —

Resp's Ex 1 id
(Rammed) 1/29/59

[fols. 753-754] RESPONDENT'S EXHIBIT 6

Williamsburg Steel Products Company
Paidge Ave.
Brooklyn 22, N. Y.

EVergreen 9-5520-1-2

DRAFTING ROOM

Apprentice Draftsman:

He has basic drafting knowledge, with some practical experience, can read architectural plans, has a work knowledge of adding and subtracting fractions, etc. Furthermore, he has to be instructed and taught hollow metal drafts especially as well as supervised in its execution. Most office work has to be checked. He is usually used as a helper to an experienced draftsman or for detailing small jobs that are checked before submission for approval.

Junior Draftsman:

This man has a basic knowledge of draftsmanship as well as some hollow metal experience, he is qualified to submit jobs of a small and simple nature for approval without those having been checked prior to his submission. Or he might be a man that has been especially trained in one particular phase of hollow metal work such as school or housing jobs and while he is equipped to submit those jobs for approval without check, he is limited in his knowledge and ability to those levels above for a junior draftsman.

Intermediate Draftsman:

This man can handle most jobs but needs help and instruction on special difficult problems such as complicated special openings or other specialized items. He is not [fol. 755] fully versed in our standard fabrication limitations and is to consult his superiors in all matters of a more complicated nature.

Senior Draftsman:

A senior is a man that is fully versed in all aspects of hollow metal drafting. He has working knowledge of our fabrication standards, procedures and policies, he can

handle any job given to him and while he might refer to the Chief Draftsman for difficult problems, he would do this only to assure himself the solution he himself has obtained is the most practical one.

LISTING

Apprentice Lister:

He has a basic knowledge of mathematics such as adding and subtracting fractions and can read and understand blue prints as well as hardware templates, must be constantly supervised and instructed and most of his work has to be checked.

Junior Lister:

This man can list any easy job without requiring to be checked, on harder jobs he still has to be checked. He is qualified to list an easy job up to a 15 hr. estimated rate and a harder job up to an 8 hr. estimated rate. Anything of a real difficult nature, no matter how small the job might be cannot be handled by him.

Intermediate Lister:

He is qualified to list an easy job up to a 35 hr. estimate rate and a harder job up to a 25 hr. estimated rate. He still has to be supervised and instructed in problems [fol. 756] such as complicated hardware and design questions as well as company policies. He is not fully qualified to solve new problems by himself. He can handle the toughest job as long as it is a very small one.

Senior Lister:

He is qualified to list any job, handle any problems, knows all company policies and standards. Although he himself is qualified to make all the decisions required by any job, he might be called upon to list, he still will consult the head of the department if only to verify his own decision.

ELEVATOR DEPT.

Apprentice:

Can read blue prints, has a work knowledge of mathematics, is well versed in drafting, must be constantly supervised and trained and has to maintain an average speed on standards.

Junior:

Can draft, list all types of jobs but needs supervision and has to constantly be instructed on harder problems.

Intermediate:

Can list and detail without supervision in job, can solve all problems, but consults his superior on a possible improved solution.

Senior:

Is fully versed in detailing, listing, checking, checking of details, checking of listing without supervision, can an- [fol. 757] swer all questions in general, can solve all problems pertaining to elevator entrance and elevator cabs.

APARTMENT HOUSE

Apprentice:

Working knowledge of mathematics, can read blue prints and templates, must constantly be supervised and instructed, most of his work is to be check.

Intermediate:

Can detail and list easy jobs. supervised and checked on harder jobs, can handle telephone orders as well as well versed in customers' relations.

Senior:

Can detail and list without having to be checked all types of jobs as well as being versed in customers' relations, knows company policies and is well equipped to make decisions as far as telephone orders and deliveries are concerned.

[fol. 758] RESPONDENT'S EXHIBIT 7

Williamsburg Steel Products Company
Paidge Ave.
Brooklyn 22, N. Y.

EVergreen 9-5520-1-2

January 27, 1959.

Schedule of Employees Who Left During 1957

Name	Date
William G. Hanks	July, 1957
Michael A. Capone	August, 1957
Harold Jack Sapper	August, 1957
Peter J. Banalette	August, 1957
Simon A. Perrone	January, 1957
Edward Luizer	May, 1957
Chris John Mercogliano	March, 1957
Anthony Mercogliano	January, 1957
Daniel Sputo	February, 1957
Gerald Kemp	February, 1957
Walter S. Gregorwich	March, 1957
Anthony John Morrongiello	February, 1957
William Rodriguez	March, 1957
Robert Kyle III	June, 1957
Charles A. Berkley	June, 1957
Frederick J. Smith	April, 1957
Martin B. Kahn	June, 1957
George Dewiliby	June, 1957
Oscar Ziegler	June, 1957

[fol. 759] RESPONDENT'S EXHIBIT 8

Williamsburg Steel Products Company
Paidge Ave.
Brooklyn 22, N. Y.

EVergreen 9-5520-1-2

January 27, 1959

Drafting Room Personnel Who Left 1956

Name	Date
Carmen Macchiaroli	September, 1956
Alexander Grosman	July, 1956
William Mazzoli	July, 1956
Milton Drayton	July, 1956
Bernard Serlin	July, 1956
Mattie Michael Hannus	September, 1956
J. Delprete	September, 1956

[fol. 760] RESPONDENT'S EXHIBITS 10 A, B, C AND D

(See opposite page)

[fol. 760a]

RESPONDENT'S EXHIBIT 10 A

STARTING WEEK OF - 12-30 YEAR 58

LISTS	NUMBERS IN PANEL	12-30	1-6	1-13	1-20	1-27	2-3	2-10	2-17	2-24	3-3	3-10	3-17
BM	32	—	42	60	—	45	50	—	37	63	84	—	—
ES	35	—	36	10	—	24	38	37	51	32	48	48	35
VT	37.3	—	27	35	67	30	32	24	37	36	70	90	—
PB	34	—	21	75	—	78	5	23	46	26	50	78	6
CO	30	32	20	65	—	26	23	25	49	23	36	61	—
RJ	34.2	19	28	?	36	85	6	11	23	21	52	11	31
PA	33	57	21	?	28	8	41	30	25	33	46	28	40
JJ	39	33	43	30	36	39	66	27	Redo	Redo	Redo	Redo	Redo
WV	22	8	24	?	26	11	18	27	26	22	21	28	25
AS	36	27	21	47	40	19	35	42	22	45	35	33	65
MC	34.4	20	43	37	31	28	42	48	23	37	51	20	33
PC	5	S	S	S	S	S	S	S	S	[illegible]	—	—	—
PP	5	S	S	S	S	S	S	S	S	S	S	S	S
RF	24	31	18	12	41	28	14	36	16	34	14	18	29 HP
AB	31.8	36	49	36	44	31	25	32	36	20	30	24	35
MS	33	37	30	42	35	42	35	27 HC	27	21	36	Redo	Redo
AM	35	44	29	S	S	S	S	S	S	S	S	S	S
LL	34	NS	10 HP	HP	26	39	38	Redo	34	HP	IP	NP Term	Voice Off
EP	31.6	HP	HP	HP	43	21	45	45	29	26	29	Redo	Redo Never HP
RK	HP	HP	HP	HP	HP	HP	HP	S	S	S	S	S	S
DD	HP	HP	HP	HP	HP	HP	HP	S	S	S	S	S	S
MA	HP	HP	HP	HP	HP	HP	HP	S	S	S	S	S	S
CM	42	—	—	—	—	—	—	—	—	—	52	36	43
TOTAL	562								NA				

[fol. 760b]

RESPONDENT'S EXHIBIT 10 B

2-8-58

3 MONTH PERIOD (12 WEEKS)

LISTS	R	STARTING WEEK OF - 6-17 YEAR 19-57											
		6-17	6-24	7-1	7-8	7-15	7-22	7-29	8-5	8-12	8-19	8-26	[illegible]
BM	35.4	30	55	9	46	VACATION	VACATION	36	[illegible]	90	27	0	30
ES	29	55	0	VACATION	VACATION	70	0	36	45	8	25	47	0
VT	27.3	0	39	0	VACATION	VACATION	102	0	0	86	0	17	29
FB	44	36	53	50	109	16	38	VACATION	VACATION	46	22	36	32
CO	27	30	30	0	39	36	[illegible]	30	25	VACATION	VACATION	19	[illegible]
RJ	—	—	—	—	—	—	—	—	—	—	—	—	—
FA	24	23	20	27	40	13	27	16	24	15	23	35	20
JJ	27	5	5	VACATION	5	5	ARMY	ARMY	23	25	33	35	17
WV	19	VACATION	5	5	5	5	5	5	20	3	[illegible] 21	36	21
[illegible]	34.3	0	[illegible]	45	45	0	VACATION	VACATION	[illegible]	47	45	59	36
MG	27	20	43	[illegible]	VACATION	21 @ 5	5	5	5	5	5	5	5
PC	26	20	36	16	42	16	VACATION	24	5	5	5	5	5
PP	26	26	16	23	35	43	17	INST	VACATION	17	21	21	27
RF	HP	HP	HP	HP	HP	HP	HP	HP	5	HP	HP	11	12
AB	HP	HP	HP	HP	HP	HP	HP	[illegible]	5	HP	HP	HP	26
MG		—	—	—			HP	HP	HP	HP	HP	HP	HP
AM		—	—	—							—	—	—
IL	HP	—	—	—							HP	HP	HP
GP		—	—	—									
RK	HP	—	—	—							HP	HP	HP
DD	HP	—	—	—							HP	HP	HP
MA		—	—	—									
TOTAL	345								NA				

[fol. 760e] **RESPONDENT'S EXHIBIT 10 C**

10-C

2-8-57

STARTING 3-25 1957

		3-25	4-1	4-8	4-15	4-22	4-29	5-6	5-13	5-20	5-27	6-3	6-10
	38	35	32	55	64	46	30	65	30	36	0	18	[redacted] 44
	28	0	98	4	0	54	0	0	[redacted]	36	0	86	0
	23	28	14	40	2	68	0	95	0	0	8	[redacted]	45
	34	27	30	40	31	60	17	55	40	34	0	38	40
	34	34	40	35	44	35	39	51	30	19	20	27	38
		—	—	—	—	—	—	—	—	—	—	—	—
		5	5	5	5	5	5	5	41	10	0	VACATION	32
		5	5	5	5	5	5	5	5	5	5	5	5
		17	18	13	16	20	5	5	5	5	5	5	5
		37	32	30	74	0	0	6	34	45	47	33	63
	3	35	43	6	25	37	31	OUT 4 DAYS	38	34	19	38	SICK
	7	34	26	14	27	29	36	30	16	30	0	40	63
		21	[redacted]	23	26	0-3 HP	30	23	26	17	6	32	23
		HP	HP	HP	HP	HP	HP	HP	HP	HP	HP	HP	HP
	HP	HP	HP	HP	HP	HP	HP	HP	HP	HP	HP	HP	HP
		—	—										
		—			—	—							
		—	—										
		—											
		—											
		—											
		—											
	317								NC				

R 10-D

2-8-58

STARTING ... -12-31 ... 1958

		12-31	1-7	1-14	1-21	1-28	2-4	2-11	2-18	2-25	3-4	3-11	3-18
BM	45	20	80	4	63	67	71	45	25	ABSENT 5 DAYS	30	85	1
ES	29	30	30	44	0	20	33	0	67	0	40	42	42
VT	31	40	46	100	0	0	45	24	0	[redacted]	40	40	
[redacted]	30	28	14	57	0	43	97	0	35	4	70	0	14
CO	31	29	38	27	30	40	53	20	32	10	25	36	35
RJ	S	S	S	S	S	QUIT	—	—	—	—	—	—	—
FA	S	S	S	S	S	S	S	S	S	S	S	S	S
JJ	21	12	28	43	S	S	S	S	S	S	S	S	S
[redacted]	25	15	22	30	28	16	33	31	27	15	16	32	32
[redacted]	29	25	60	27	18	23	34	36	0	ABSENT 5 DAYS	30	70	0
NC	25	27	22	27	30	19	35	[redacted]	17	23	32	25	16
PC	26	26	33	24	31	33	33	33	37	28	29	17	24
PP		—	—	—	—	HP	HP	HP	HP	HP	HP	20	11 HP
RF		—	—	—	—	—	—	—	—	—	—	HP	HP
AB		—	—	—	—	—	—	—	—				
MG		—	—	—	—	—	—	—	—				
AM		—	—	—	—	—	—	—	—				
IL		—	—	—		—	—	—	—			—	
GF		—	—	—	—	—	—	—	—			—	
RK	HP	—	—	—	—	—	—	—				—	
DD	HP	—	—	—	—	—	—	—				—	
[redacted] CM	24	10	44	23	39	18	40	35	15	22	30	12	QUIT
TOTAL	316								101				

[fols. 761-762] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 82—October Term, 1960

(Argued November 15, 1960)

Docket No. 26289

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY, Respondent

Before: LUMBARD, Chief Judge; WATERMAN and MOORE, Circuit Judges.

National Labor Relations Board petitions to enforce its order against Respondent on ground that Respondent violated 29 U. S. C. A. §§158(a)(1) and 158(a)(5). Enforcement denied. Cause remanded.

STUART ROTHMAN, General Counsel, Dominick L. Manoli, Associate General Counsel; Marcel Mallet-Prevost, Assistant General Counsel; Frederick U. Reel, James A. Ryan, Attorneys, National Labor Relations Board, for Petitioner. [fol. 763] RAPHAEL, SEARLESS, LEVIN & VISCHI (Sidney O. Raphael, Leo M. Drachsler, of counsel), New York City, for Respondent.

OPINION—April 11, 1961

WATERMAN, Circuit Judge:

The National Labor Relations Board has petitioned this court pursuant to Section 10(e) of the National Labor Relations Act (NLRA) for enforcement of an order of January 22, 1960 it issued against the respondent, Benne Katz, Alfred Finkel and Murray Katz, d/b/a Williamsburg Steel Products Company (Employer).

The General Counsel's Complaint and Notice of Hearing was issued to Employer on September 8, 1958 based upon charges of unfair labor practices made by Architectural & Engineering Guild, Local 66, American Federation of

Technical Engineers AFL-CIO (Union). The Complaint alleged that "Employer did refuse and continue to refuse to bargain collectively with Local 66 as the exclusive bargaining representatives of all the [technical engineering employees of Employer's Engineering Department in New York] in that:

"(a) In or about March 1957, and at various times thereafter to date, Respondent Employer unilaterally changed the terms and conditions of employment relating to sick leave of employees in the unit described above.

"(b) In or about April 1957, and at various times thereafter to date, Respondent Employer unilaterally changed existing wage rates and other terms and conditions of employment of employees in the unit described above.

"(c) Since in or about March 1957, and at various times thereafter to date, Respondent Employer bar- [fol. 764] gained directly and individually with employees in the unit described above * * *, concerning rates of pay, wages, hours of employment, or other terms and conditions of employment.

"(d) In or about June and July 1957, Respondent Employer, through its agents, supervisors or representatives, including Herbert Jacobson and others unknown, aided and assisted employees in the unit described above * * * to repudiate Local 66 as their bargaining representative.

"(e) In or about June, July and August 1957, and at various unknown times thereafter to date, Respondent Employer, in derogation of Local 66's representative status, through Respondent Employer's agents, supervisors or representatives including Jacobson, Wisniewski and others unknown, publicized, sponsored, approved, permitted, attended and participated in meetings on its premises of employees in the unit described above."

These allegations were claimed to constitute separate unfair labor practices within the meaning of Sections 8(a)(1)

and 8(a)(5) of the NLRA, 29 U. S. A. §§158(a)(1), 158 (a)(5).

After Employer's answer was filed a long contested hearing ensued before a Trial Examiner in which, as appears to be normally the case, two completely divergent versions of the history of the collective bargaining of the parties were presented. The Trial Examiner chose to accept the version presented by the Board's counsel, and his findings were unfavorable in every respect to Employer. He found that subsequent to the certification of Union on July 5, 1956 and during the negotiating of an initial collective bargaining agreement the following acts of Employer occurred:

> [fol. 765] (a) In October 1956 and January 1957 Employer unilaterally granted merit increases to its employees without notice to or negotiation with Union.
>
> (b) On or about March 11, 1957 Employer unilaterally made a substantial change in its sick leave policy without notice to Union.
>
> (c) In April 1957 Employer announced a new system of wage increases: "These increases were announced without notice to, or consultation with, the Union and were substantially better than what Respondent had previously offered the Union."

The Trial Examiner next considered and rejected the reasons advanced by Employer explaining the action taken. He concluded:

> "Rather than demonstrating bad faith bargaining by the Union, the entire record compels the conclusion that it was Respondent's conduct which brought the negotiations to naught. Thus, Respondent's unilateral action heretofore found, 'while negotiations were still continuing, and in complete disregard of the Union's status, provides the final insight into Respondent's conduct of the negotiations with the Union. It clearly shows that * * * *Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union as required by the provisions of the Act.*' (Emphasis supplied.)

"On the entire record I find and conclude that by taking the unilateral action above found before any claimed impasse was reached, *and while negotiations were pending,* Respondent did so in clear disregard of its obligation to bargain with the Union as the exclusive bargaining representative of its employees, and [fol. 766] thereby undermined the authority which the Act bestowed upon the Union. By that conduct, Respondent violated Section 8(a)(1) and (5) of the Act. *Medo Photo Supply Corporation* v. *N. L. R. B.*, 321 U. S. 678, 683-684; *May Department Stores Co.* v. *N. L. R. B.*, 326 U.S. 376; *N. L. R. B.* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217."

In a short decision the Board accepted the Examiner's factual findings (a), (b) and (c) above set forth in the second preceding paragraph. It rejected the Examiner's finding that Employer had failed to bargain in good faith,[1] but interpreted the unilateral acts as having been in themselves unfair labor practices within the purview of §§ 8(a)(1) and 8(a)(5).

An order was issued directing Employer to cease and desist from:

(a) "Unilaterally changing wages, rates of pay, or sick leave, or granting merit increases, *or in any similar or related manner refusing to bargain collectively* with [Union] * * * " (Emphasis supplied.)

(b) "Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with the Union * * * "

---

[1] "We construe the Intermediate Report as finding violations only with respect to the above specified unilateral acts. As the General Counsel filed no exceptions, we do not pass on any other allegations in the complaint. There is no allegation in the complaint that the Respondent generally bargained in bad faith in the actual negotiations with the Union. Therefore, we do not adopt the board [sic] statement in the Intermediate Report that ' * * * Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union. * * * ' "

And Employer was also affirmatively directed to bargain collectively if requested to do so.

[fol. 767] We are of the opinion that the unilateral acts here complained of, occurring as they did during the negotiating of a collective bargaining agreement, do not *per se* constitute a refusal to bargain collectively and *per se* are not violative of §8(a)(5). While the subject is not generally free from doubt, it is our conclusion that in the posture of this case a necessary requisite of a Section 8(a)(5) violation is a finding that the employer failed to bargain in good faith. Moreover, we conclude that here the §8(a)(1) violations the Board has found derived from the acts found to have violated §8(a)(5) and that these violations, also, are unproved without the necessary finding that the employer failed to act in good faith.

I

Section 8(a)(5) provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) of this title."[2] Sections 8(a)(5) (then §8(5)) and 9(a) were part of the original National Labor Relations Act of 1935 and were early interpreted to require that in the interest of industrial peace the employer confer and negotiate with the accredited representative of his employees, *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937). However, the act was not read *to compel agreement*. *NLRB* v. *Jones & Laughlin Steel Corp., supra*, at 45. Therefore, it is not difficult to find a violation of §8(a)(5) where the employer completely refuses to confer [fol. 768] and to negotiate with the union representative of

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[2] Section 9(a) of the NLRA, 29 U. S. C. A. §159(a) provides:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect of rates of pay, wages, hours of employment, or other conditions of employment: * * *"

his employees.[3] On the other hand, it is difficult indeed to determine whether the employer is in fact negotiating and conferring in an attempt to resolve differences with his employees, i.e., bargaining "in good faith," once the employer meets the union at the collective bargaining table. Such a determination rests upon a subjective evaluation of the employer's attitude.[4] This evaluation can only be effectively made in terms of the complete bargaining situation.

In 1947 Congress re-evaluated the NLRA. At that time there was some concern expressed in the House of Representatives over the vagueness of the concept of the employer's duty to "bargain in good faith." It was suggested that perhaps a statutory definition of "collective bargaining" would solve that vagueness for there would then be an objective standard governing an employer's actions, which, if not met by the employer, would thereby constitute a refusal to bargain and consequently be a violation of §8(a)(5). A formalistic, procedural definition of "collective bargaining" was included in the Bill that passed

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[3] For cases finding such violations see *Mays Department Stores* v. *NLRB*, 326 U. S. 376 (1945); *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678 (1944) discussed *infra*. See also *NLRB* v. *Parma Water Lifter Co.*, 211 F. 2d 258 (9 Cir.), cert. denied, 348 U. S. 829 (1954); *NLRB* v. *Burton-Dixie Corp.*, 210 F. 2d 199 (10 Cir. 1954). Mere attendance at meetings by an employer in order to inform the union that he will not bargain is a refusal to bargain, *NLRB* v. *Israel Putnam Mills*, 197 F. 2d 116 (2 Cir. 1952). The refusal to bargain may concern only one of the many subjects of collective bargaining. See *NLRB* v. *Berkley Machine Works*, 189 F. 2d 904 (4 Cir. 1951) (wages and merit increases); *NLRB* v. *General Motors Corp.*, 179 F. 2d 221 (2 Cir. 1950) (group insurance program).

[4] *NLRB* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131 (1 Cir.), cert. denied, 346 U. S. 887 (1953). Judge Magruder declared that: "The ultimate issue whether the Company conducted its bargaining negotiations in good faith involves a finding of motive or state of mind which can only be inferred from circumstantial evidence." 205 F. 2d at 139-40.

the House (H. R. 3020, 80th Cong. 1st Sess. §2(11) (1947)). [fol. 769] See I *Legislative History of the Labor-Management Reporting and Disclosure Act of 1947*, at 311. Senate amendments to the House Bill contained no such definition. The Senate desired to retain and make statutory the subjective test developed by adjudication under the original 1935 Act and refused to concur in the inclusion of the rigid definition of "collective bargaining" desired by the House. It was the Senate view that the approach the House proposed would retard rather than advance the course of collective bargaining and the cause of industrial peace, for the employer's true intent would be immaterial and a recalcitrant employer need only *pro forma* comply with procedural provisions to avoid committing an unfair labor practice. A Committee of Conference report recommended the adoption of the Senate's amendment. This report was accepted by both Houses and hence the "good faith" test was enacted into law, becoming Section 8(d) of the present act (29 U. S. C. A. §158(d)). See H. R. Rep. No. 510, 80th Cong. 1st Sess. 34-35 (1947). It provides:

> "(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *"

And a corresponding duty to bargain in good faith was imposed upon the union by Section 8(b)(3) of that Act [fol. 770] which provides that it shall be an unfair labor practice for a labor organization "to refuse to bargain collectively with an employer." 61 Stat. 141 (1947), 29 U. S. C. A. §158(b)(3). It is significant that this statutory test has remained unchanged from 1947 to date even though the Act was largely amended in other particulars in 1951 and in 1959. Thus the development and future design of

the test of "bargaining in good faith" was left to adjudicative development through the decisions of the National Labor Relations Board and of the courts.[5]

The NLRB urges upon this court that unilateral action taken by an employer regarding bargaining matters when employees are represented by a Board certified bargaining agent is completely inconsistent with the principle of collective bargaining and conclusively determines that the employer in so doing was not acting in good faith. The Board cites *NLRB* v. *Crompton-Highland Mills*, 337 U. S. 217 (1949), as authority for this proposition. Admittedly, this approach on the part of the NLRB is consistent with a number of its administrative decisions. See, e.g., *Union Mfg. Co.*, 96 NLRB 792 (1951); *Sullivan Dry Dock & Repair Corp.*, 67 NLRB 627 (1946). Our consideration of *NLRB* v. *Crompton-Highland Mills*, *supra*, in conjunction with other relevant Supreme Court cases interpreting §8(a)(5) and its predecessor §8(5) convinces us that the NLRB has erred in its interpretation.

NLRB v. *Crompton-Highland Mills*, *supra*; *Mays Department Stores Co.* v. *NLRB*, 326 U. S. 376 (1945); and *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678 (1944) were decided under Section 8 (5) of the 1935 Act. Both *Medo* and *Mays* are significantly different from the present case. In *Medo* the employer negotiated independently [fol. 771] with a group of employees and agreed to grant a wage increase in return for a repudiation of the union. There can be no doubt that this was a flagrant violation of Section 8 (5) as a refusal to bargain. *Mays*, too, involved a situation where the employer completely refused to recognize and bargain with the Board certified union. The *Crompton-Highland Mills* case is closer to the case at issue. In *Crompton* there had been extended negotiations which had reached an impasse. Thereafter, without prior consultation with the union, the employer granted a unilateral wage increase substantially in excess of anything previously offered the union. This action was

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[5] See *NLRB* v. *American Nat'l Ins. Co.*, 343 U. S. 395, 401-404 (1952) for a summary of the legislative history of the 1947 Act.

interpreted by the Board to show that the employer was not acting in good faith during the negotiations. The reasons the employer advanced to justify the unilateral increase were rejected by the Board, and it is important to note, of course, that the Board made an express finding that the employer had failed to bargain in good faith. The Court affirmed the Board's findings.

Subsequent to the amendments of 1947 by which, as discussed above, §8(5) became §8(a) (5) without any change in text, the Supreme Court decided *NLRB* v. *Insurance Agents' Union*, 361 U. S. 477 (1960); *NLRB* v. *Wooster Division of Borg-Warner Corp.*, 356 U. S. 342 (1958); *NLRB* v. *Truitt Mfg. Co.*, 351 U. S. 149 (1956); *NLRB* v. *American Nat'l Ins. Co.*, 343 U. S. 395 (1952); NLRB v. *Mexia Textile Mills*, 339 U. S. 563 (1950); and *NLRB* v. *Pool Mfg. Co.*, 339 U. S. 577 (1950). *Mexia and Pool* were companion cases primarily dealing with a problem which arose with respect to the enforcement of the Board's orders where §8(a) (5) violations had been found. In both cases the "failure to bargain was *manifest from evidence*"[6] [fol. 772] of incidents that occurred during negotiations—incidents that included, among others, a unilateral wage increase and the deliberate shunting of union officials from one company official to another, in order to make any progress impossible. Once again the Trial Examiner and the Board concluded that these various incidents indicated "an unmistakable effort to escape genuine collective bargaining." 339 U. S. 563, at 565. In *American National Insurance Co.* the employer, without prior consultation with the union, instituted unilateral changes in working conditions by the establishment of new night shifts and the introduction of a new system of lunch hours. The Trial Examiner found that "upon review of the entire negotiations, including respondent's unilateral action in changing working conditions during the bargaining • • • respondent [employer] had refused to bargain in a good faith effort to reach agreement."[7] This finding was adopted by the

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[6] 339 U. S. 563, at 565.

[7] This language, 343 U. S. 395, at 400, is the summarization of the Trial Examiner's findings by the Supreme Court.

Board and subsequently affirmed by the Court of Appeals for the Fifth Circuit, 187 F. 2d 307 (1951). Commenting upon the decision of the Fifth Circuit the Supreme Court said: " • • • respondents' unilateral action in changing working conditions during bargaining *does support a finding* that respondent had not bargained collectively in good faith as required by the Act." 343 U. S. 395, at 401. (Emphasis supplied.) In its later discussion of the question actually before it on appeal, i.e., whether an employer's desire to insert a management function clause was a *per se* violation of the Act, the Supreme Court stated that a management functions clause, although it gave an employer the initial responsibility for certain working conditions, was assuredly a valid clause. Therefore, bargaining for such a clause was an employer's prerogative—the [fol. 773] only requirement being that he bargain for it in good faith. The Court went on to say: "The court below correctly applied the statutory standard of good faith bargaining to the facts of this case. It held that the evidence, *viewed as a whole*, does not show that respondent refused to bargain in good faith by reason of its bargaining for a management function clause as a counterproposal to the Union's demand for unlimited arbitration." 343 U. S. 395, at 409. (Emphasis supplied.)

In *Truitt* the Supreme Court enforced a Board order that the Court of Appeals for the Fourth Circuit had refused to enforce and held that a "refusal to attempt to substantiate a claim of inability to pay increased wages may support a finding of a failure to bargain in good faith." 351 U. S. 149, at 153. In order to substantiate his good faith, therefore, an employer could be required to make a reasonable attempt, one not overly burdensome to him, to justify his claim of slender finances. But, said the Supreme Court, "We do not hold • • • that in every case in which economic inability is raised as an argument against increased wages it automatically follows that the employers are entitled to substantiating evidence. Each case must turn upon its particular facts. The inquiry must always be whether or not *under the circumstances of the particular case* the statutory obligation to bargain in good

faith has been met." 351 U. S. 149, at 153-54. (Emphasis supplied.)[8]

The employer in *Borg-Warner* insisted upon the inclusion of certain clauses in the bargaining agreement that [fol. 774] the Court held were not the subject of mandatory bargaining under § 8(d), and therefore his insistence was found to demonstrate that the employer was not bargaining in good faith, and, in effect, was committing a *per se* violation of § 8(a)(5). *Borg-Warner* is thus distinguished from *American National Insurance Co.* where the clauses insisted upon were subjects of mandatory bargaining. *Borg-Warner* appears difficult to reconcile with the prior pattern of adjudication which has required a finding of a lack of good faith based on consideration of the *totality* of the collective bargaining events. In a dissenting opinion, 356 U. S. 351, Justice Harlan, joined by Justices Clark and Whittaker, reminded the Court of the long prior history that had avoided rigid restrictions on the bargaining process. He pointed out that unions might be severely circumscribed in their activities if all that unions could bargain for were those matters which were subjects of mandatory bargaining under § 8(d). Moreover, Justice Harlan stated that he was unable to grasp the majority's reasoning that an employer in good faith could propose matters not the subject of mandatory bargaining and that such subjects could properly be included in a collective bargaining agreement, but that the insistence by the employer upon the inclusion of such matters in the agreement was *per se* indicative of a lack of good faith and a violation of the Act.

The Court returned to its former approaches in the next case to come before it. In *NLRB* v. *Insurance Agents' International Union*, 361 U. S. 477, the Court construed

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[8] The Supreme Court in *Truitt* approved of *NLRB* v. *Jacobs Mfg. Co.*, 196 F. 2d 680 (2 Cir. 1952) in which this court enforced a Board order based upon a finding of a lack of good faith on the part of the employer because the employer "refused to disclose pertinent facts to show that it had, in good faith, reached its decision that it could not afford to meet the union demands." 196 F. 2d at 684.

§ 8(b)(3) of the Act—which, as described above, is as to unions the corollary of Section 8(a)(5)—to mean that economic sanctions exerted by a union were not *per se* violative of § 8(b)(3) but the totality of the behavior of the union as portrayed throughout the entire negotiations [fol. 775] must be judged by the good faith test. The Court again retraced the history of the affirmative duty placed by the Act upon both union and employer to bargain collectively in good faith. It again conceived the function of the National Labor Relations Board to be that of an agency existing for the purpose of encouraging parties to reach collective bargaining agreements, and that once this function is concluded the parties must be left to their own uninterfered-with devices provided only that they bargain fairly and are desirous of reaching agreement.

Recognizing that so subjective a standard necessarily produces, case by case, many divergent decisions, how, then, should this court approach the unilateral acts of Williamsburg Steel Products Company which the Board urges upon us are *per se* violations of § 8(a)(5)? One scholar in the field has stated the general problem as follows:

> "Whether unilateral action is an unfair labor practice per se depends on whether the National Labor Relations Act seeks to compel joint participation or leaves the joint participation to evolve without additional legal sanction after it has created opposing concentrations of economic power." Cox. *Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401, 1424 (1958).

We are convinced by the legislative and judicial history of the NLRB that it is the latter alternative which the Act contemplates. We believe that with an over-all consistency through all the cases, the Supreme Court has concerned itself with the totality of negotiations and has been loath to look at specific acts as being violative of the Act apart from the bargaining totality. *NLRB* v. *Insurance Agents' International Union, supra*, the Court's most recent word, supports our position. If the NLRB were given the power [fol. 776] to involve itself with the myriad specific acts that make up a labor-management negotiation we would no

longer have employer-employee negotiation but enforced governmental arbitration.

It is true, as the Board suggests, that the most plausible inference to be drawn from a unilateral change in working conditions, mandatory subjects of collective bargaining under §8(d), is that the employer is no longer bargaining in good faith. And the nature and extent of the changes so instituted may give added weight to such an inference.[9] However, the fact of the unilateral change does not require the inference of a failure to bargain in good faith and the consequent finding that there has been a violation of §8(a) (5). The evidence must be tested within the framework of the entire bargaining siutation. An opportunity must first be given the employer to rebut the inference, and finally there must be a definite determination of the mental attitude of the employer. The language of the Supreme Court indicates that, beginning with *Cromptor* and concluding with *Insurance Agents' Union*, the above described approach is the correct one.[10]

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[9] Compare *NLRB* v. *Bradley Washfountain Co.*, 192 F. 2d 144 (7 Cir. 1951) with *NLRB* v. *National Shoes*, 208 F. 2d 688 (2 Cir. 1953).

[10] We are reinforced in our approach by the history of §8(a) (5) in our own Circuit. *NLRB* v. *Jacobs Mfg. Co.*, *supra* at footnote, 8, defined bargaining in good faith to mean "cooperation in the give and take of personal conferences with a willingness to let ultimate decision follow a fair opportunity for the presentation of pertinent facts and arguments." 196 F. 2d 680, at 683. Considering the totality of events the court enforced a Board order based upon a Board finding that the employer had failed to bargain in good faith.

NLRB v. *Century Cement Mfg. Co.*, 208 F. 2d 84 (2 Cir. 1953) applied the test as so defined to an employer who had unilaterally instituted merit raises and wages increases. The court declared that: "Such unilateral action as to subject matter proper for bargaining negotiations was *further evidence* of a failure to bargain in good faith in violation of §§ 8(a)(5) and (1) of the Acts" (208 F. 2d 84, at 86) and enforced the Board's order based upon a Board finding

[fol. 777] This court is next presented with the problem of whether we ourselves may test the inference arising from Employer's unilateral acts on a petition for enforcement or whether we must remand to the National Labor [fol. 778] Relations Board for its initial determination of this issue. In all the Supreme Court cases that we have discussed in which the Board's order was enforced there had been a Board finding that the respondent-employer had failed to bargain in good faith. Here, the Board explicitly declined to do so. Justice Frankfurter, concurring in *NLRB* v. *Insurance Agents' Union, supra,* which struck down the Board's finding of a *per se* violation, disposed of this problem for us in the following language:

> "In enforcing the duty to bargain *the Board must find the ultimate fact* whether, in the case before it and in the context of all its circumstances, the respondent has engaged in bargaining without the sincere desire to reach agreement which the Act commands. 361 U. S. at 495." (Emphasis supplied.)

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that the employer had failed to bargain in good faith. (Emphasis supplied.)

In *NLRB* v. *National Shoes, supra* at footnote 9, the Board petitioned this court for enforcement of its order based upon a finding that the employer refused to bargain. We enforced that order declaring that: "The problem is essentially to determine from the record the intention or the state of mind of respondents [employers] in the matter of their negotiations with the union. In this proceeding, as in many others, such a determination is a question of fact to be determined from the record." 208 F. 2d 691-692. To be sure, there was some gratuitious dicta of which we disapprove to the effect that a unilateral wage increase was a *per se* violation of §8(a) (5). See also *NLRB* v. *Acme Air Appliance Co.*, 117 F. 2d 417 (2 Cir. 1941); *NLRB* v. *Superior Fireproof Door & Sash Co.* (2 Cir., March 28, 1961).

Cases from other U. S. Courts of Appeals in accord with our own position are: *Joy Silk Mills* v. *NLRB*, 185 F. 2d 732 (D. C. Cir. 1950), cert. denied, 341 U. S. 914 (1951); *NLRB* v. *Reed & Prince Mfg. Co., supra* at footnote 4 (1 Cir.); *NLRB* v. *Landis Tool Co.*, 193 F. 2d 279 (3 Cir.

This interpretation of the proper duty of the Board is consistent with that found in all of the cases decided by the Court and is in accord with the legislative history of the Act.

In this case the Board has not made a finding that Employer failed to bargain in good faith—in fact, the Trial Examiner's finding of bad faith was expressly rejected by it. Although we might, therefore, be justified in denying enforcement without remand, we think that since the Board's finding of an unfair labor practice impliedly proceeds from an erroneous view that specific unilateral acts, regardless of bad faith, may constitute violations of [fol. 779] § 8(a) (5), the case should be remanded to the Board in order that it may have an opportunity to take additional evidence, and make such findings as may be warranted by the record.

1952); *NLRB* v. *Norfolk Shipbuilding & Drydock Corp.*, 195 F. 2d 632 (4 Cir. 1952); *White* v. *NLRB*, 255 F. 2d 564 (5 Cir. 1958); *Cone Bros. Contracting Co.* v. *NLRB*, 235 F. 2d 37 (5 Cir.), cert. denied, 352 U. S. 916 (1956); *NLRB* v. *Harris*, 200 F. 2d 656 (5 Cir. 1953); *Majure* v. *NLRB*, 198 F. 2d 735 (5 Cir. 1952); *NLRB* v. *Booker*, 180 F. 2d 727 (5 Cir. 1950); *NLRB* v. *Dixie Motor Coach Corp.*, 128 F. 2d 201 (5 Cir. 1952); *NLRB* v. *Bradley Washfountain Co.*, *supra* at footnote 9 (7 Cir.); *NLRB* v. *O'Keefe & Merritt Mfg. Co.*, 178 F. 2d 445 (9 Cir. 1949); *NLRB* v. *Lettie Lee, Inc.*, 140 F. 2d 243 (9 Cir. 1944); *NLRB* v. *F. M. Reeves & Sons, Inc.*, 273 F. 2d 710 (10 Cir. 1959); *NLRB* v. *Hamilton*, 220 F. 2d 492 (10 Cir. 1955).

In the following cases Board orders, based upon a finding of a lack of good faith were enforced, the various courts considering the entire record. However, in each there was language, unnecessary to the decision, that might indicate that unilateral changes in working conditions were *per se* violations of §8(a) (5). *Great Southern Trucking Co.* v. *NLRB*, 127 F. 2d 180 (4 Cir.), cert. denied, 317 U. S. 652 (1942); *NLRB* v. *Herman Sausage Co.*, 275 F. 2d 229 (5 Cir. 1960); *NLRB* v. *Whittier Mills Co.*, 111 F. 2d 474 (5 Cir. 1940); *NLRB* v. *Barrett Co.*, 135 F. 2d 959 (7 Cir. 1943); *NLRB* v. *Andrew Jergens Co.*, 175 F. 2d 130 (9 Cir.), cert. denied, 338 U. S. 827 (1949). See also *Pacific*

II

There remains for our consideration the Board's finding that the unilateral acts were violative of §8(a) (1) as well as § 8(a) (5). Section 8(a) (1) provides:

> "(a) It shall be an unfair labor practice for an employer—
>
> "(1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 157 of this title;"

This subsection is broadly drawn and it guarantees to employees their basic rights under the NLRA. Necessarily it encompasses many of the more specific violations contained in the succeeding subsections 8(a) (2)-8(a) (5). It has become customary for the Board to find that activities violative of subsections of § 8(a) that follow § 8(a) (1) are also violative of § 8(a) (1). In a Section 8(a) (5) situation this often results in a Board finding that the employer has failed to bargain in good faith in violation of § 8(a) (5), and that this failure to bargain in good faith is an interference with the exercise of the rights of his employees and thereby violative of §8(a) (1). See *NLRB* v. *Crompton-Highland Mills, supra; NLRB* v. *Express Pub. Co.*, 312 U. S. 426 (1941); *NLRB* v. *National Shoes*, 208 F. 2d 688 (2 Cir. 1953); *NLRB* v. *Niles-Bement Pond Co.*, 199 F. 2d 713 (2 Cir. 1952). The situation just described is different from ones where there are separate independent acts that violate §8(a) (1). See, e.g., *Mays Department Stores* v. *NLRB, supra; Medo Photo Supply* [fol. 780] *Corp.* v. *NLRB, supra.* We have a situation

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Gamble Robinson Co. v. *NLRB*, 186 F. 2d 106 (6 Cir. 1950) (enforcement denied).

For decisions disagreeing with the result reached herein see *Armstrong Cork Co.* v. *NLRB*, 211 F. 2d 843 (5 Cir. 1954); *NLRB* v. *J. H. Allison & Co.*, 165 F. 2d 766 (6 Cir.) (see dissent), cert. denied, 355 U. S. 814 (1948); *Superior Engraving Co.* v. *NLRB*, 183 F. 2d 783 (7 Cir. 1950), cert. denied, 340 U. S. 930 (1951); *NLRB* v. *Dealers Engine Rebuilders*, 199 F. 2d 249 (8 Cir. 1952); *Lloyd A. Fry Roofing Co.* v. *NLRB*, 216 F. 2d 273 (9 Cir. 1954).

before us in which the section 8(a) (1) violations were derivative—similar to the cases cited above and very different from *Mays*.

The complaint stated that Employer refused to bargain, enumerated the acts which evidenced the refusal to bargain, and charged that therefore §§8(a) (1) and 8(a) (5) were both violated. The Trial Examiner found that Employer had violated his duty to bargain with Union under §8(a) (5) and hence also violated §8(a) (1). As discussed previously, the Board found Employer's unilateral acts violative of the two sections but rejected the examiner's finding that Employer did not bargain in good faith. However, the Board's order, set out herein, was directed exclusively to the refusal to bargain. This history leads us to believe that the complaint was based upon an alleged §8(a) (5) refusal to bargain, that the alleged §8(a) (1) violations are derivative only, and that the finding that §8(a) (1) has been violated must be reviewed in the light of the review we have ordered the Board to make with respect to its finding that §8(a) (5) was violated.

Enforcement denied. Cause remanded to the National Labor Relations Board of further proceedings consistent with this opinion.

Lumbard, Chief Judge (dissenting):

In my opinion there is support in the record for the Board's finding that the employer coerced and restrained the employees in violation of §8(a) (1) of the National Labor Relations Act, 28 U. S. C. §158(a) (1), by granting a unilateral wage increase higher than that offered to the union. I think there is also sufficient evidence in the record to support the Board's conclusion that the employer refused to bargain with respect to a mandatory subject of [fol. 781] bargaining in violation of § 8(a) (5) by unilaterally changing sick leave policy during the negotiations. I would not remand the case to the Board to make a finding with regard to the employer's good faith since no allegation of bad faith bargaining was made in the complaint and there is insufficient evidence in the record as a whole to support a finding that the employer bargained in bad faith. I would modify the order of the Board so as to

prohibit only the general wage increase and the change in sick leave policy, and I would grant enforcement of the order as modified.

As I read Judge Waterman's opinion, the majority's view is that the acts committed here by the employer could amount to unfair labor practices only if the Board found that the employer was bargaining in bad faith and had no intention of reaching an agreement with the union. I think that neither reason nor precedent supports these conclusions.

I

My brethren dispose of the charges made against the employer for violation of §8(a) (1) of the Act by deciding that they were "derivative" and dependent on the finding that § 8(a) (5) had been violated. I disagree. The language of both the complaint filed with the Board and the Intermediate Report of the Trial Examiner reveal that separate §8(a) (1) violations were alleged and found. [1]

[fol. 782] I would enforce the order of the Board insofar as it held the unilateral grant of a wage increase which

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[1] After listing the various unilateral acts which the majority opinion quotes *supra* at pages 1336, 1337 and 1338, the complaint read as follows:

"11. By the acts described above in paragraph 10, *and by each of said acts*, Respondent Employer did engage in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

12. By the acts described above in paragraph 10, *and by each of said acts*, Respondent Employer did engage in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) of the Act." [Emphasis supplied.]

The Intermediate Report of the Trial Examiner listed the following among the Conclusions of Law:

"4. By failing to perform its obligation to bargain in good faith with the Union in October 1956, and thereafter, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a) (5) of the Act.

was higher than that offered to the union to be restraint or coercion under §8(a) (1). Had the wage increase been equal to or less than the proposal made to the union, it would not have violated §8(a) (1). *NLRB* v. *Bradley Washfountain Co.*, 192 F. 2d 144 (7 Cir. 1951); see *NLRB* v. *Crompton-Highland Mills*, 337 U. S. 217, 224-25 (1949). But the employer's more generous offer to the employees individually than the one made to their union representatives could only have induced them to abandon the union, which they soon did by decertification proceedings. See *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678, 684 (1944). The effect of a substantial unilateral wage increase greater than that offered to the union is to disparage the union and thereby coerce the employees to bargain individually; "such action in itself constitutes an unfair labor practice." *NLRB* v. *National Shoes, Inc.*, 208 F. 2d 688, 692 (2 Cir. 1953).

Whether §8(a) (1) has been violated depends not on the employer's intent but on whether the act in question would [fol. 783] tend to discourage union membership. *NLRB* v. *Gaynor News Co.*, 197 F. 2d 719 (2 Cir. 1953), *aff'd* 347 U. S. 17 (1954); see *Time-O-Matic, Inc.* v. *NLRB*, 264 F. 2d 96, 99 (7 Cir. 1959). The substantial unilateral wage increase not only tended to have such an effect but was

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5. By unilaterally granting merit increases in October 1956, and in January 1957, by unilaterally changing its sick leave policy on or about March 11, 1957, and by unilaterally granting wage increases in April 1957, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a) (1) of the Act."

These rulings, affirmed by the Board, clearly distinguished between the §8(a) (1) and the §8(a) (5) violations. Conclusion of Law 5 found expressly that the unilateral acts, apart from the Examiner's finding of bad faith, interfered with, restrained, and coerced employees in violation of §8(a) (1).

probably instrumental in the employees' ultimate decision to decertify. I would hold it to be a violation of §8(a) (1).

II

With respect to the obligations imposed by §8(a) (5), my brethren would hold that so long as an employer intends in good faith to reach an agreement no violation can be found. I agree that the decisions of the Supreme Court reveal that no *per se* test of good faith should be applied and that an employer's intention should be judged in the light of all the circumstances. However, I believe that more is demanded of an employer by §8(a) (5) than merely a sincere desire to reach an agreement, and I would therefore hold that certain unilateral acts during the course of collective bargaining violate §8(a) (5) apart from any finding with respect to good faith. Thus, I would enforce the Board's order insofar as it held that the change in sick leave policy was an unfair labor practice under §8(a) (5).

Section 8(a) (5) provides that it is an unfair labor practice for an employer "to refuse to bargain collective with the representatives of his employees." The statute defines the duty of collective bargaining in §8(d):

> "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the ex- [fol. 784] ecution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. * * *"

One duty imposed upon the parties by §8(d) is that of approaching the bargaining table with a sincere desire to reach an agreement. The ultimate issue for the Board and the courts with respect to this obligation is whether the respondents' acts at the bargaining table were sham and whether it in fact wished to avoid an agreement. *NLRB*

v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 134 (1 Cir.), *cert. denied* 346 U. S. 887 (1953); see *NLRB* v. *Insurance Agents Int'l Union*, 361 U. S. 477, 504, 514 (1960) [Frankfurter, *J.*, concurring]. The Board here refused to adopt the Trial Examiner's finding that the "Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union," and I believe it was correct in doing so. The evidence in the record shows that the parties had seven meetings between August 20, 1956 and December 5, 1956, at which they discussed many provisions to be incorporated into a collective-bargaining agreement, and the employer's readiness to compromise on several issues belies any contention that it did not wish to conclude an agreement.

But §8(d) requires more than just a willingness to enter into a contract. It directs not only that the parties confer in good faith, but that they do so "with respect to wages, hours, and other conditions of employment." The Supreme Court has read this language to establish certain "subjects of mandatory bargaining" which cannot be unilaterally withdrawn from the list of those to be bargained about. *NLRB* v. *Wooster Division of Borg-Warner Corp.*, 356 U. S. 342, 349 (1958). Mere willingness to conclude an [fol. 785] agreement with the union does not satisfy the employer's obligation; he must also confer with the union with respect to each and every subject of mandatory bargaining. A refusal to bargain within the meaning of §8(d) need not be a total refusal. If an employer refuses to consult the union as to any subject with respect to which bargaining is mandatory, he commits an unfair labor practice, no matter how sincere his intent. See e.g., *NLRB* v. *Niles-Bement-Pond Co.*, 199 F. 2d 713 (2 Cir. 1952) [Christmas bonuses]; *NLRB* v. *Proof Co.*, 242 F. 2d 560 (7 Cir.), *cert. denied* 355 U. S. 831 (1957) [seniority provisions and bulletin board use]. The policy underlying such a rule is that to which Professor Cox alluded in the passage immediately preceding the one set out in the majority opinion:

> "As in the case of refusal to execute a contract with a union, a distinction should be drawn between inquiring into the employer's state of mind in order to dis-

tinguish the sham from the real and condemning conduct which thwarts the policy of making terms of employment depend upon mutual consent." Cox, The Duty to Bargain in Good Faith, 71 Harv. L. Rev. 1401, 1424 (1958).

As I read §8(d), together with the gloss of the *Borg-Warner* case, Congress has decided that with respect to subjects of mandatory bargaining the decision-making process requires consultation with the union. I do not believe it is necessary to read "confer" in §8(d) as imposing upon the employer the duty of first obtaining the *consent* of the union; but it requires, at the very least, that he *discuss* any proposed significant change in conditions of employment with the employees' bargaining representatives.

An employer who, during the course of negotiations, unilaterally, and without notifying the union, institutes a [fol. 786] change in one of the conditions of employment as to which collective bargaining is mandatory is, in effect, bypassing the employee representatives and negotiating with individual employees directly. See *May Department Stores Co.* v. *NLRB.* 326 U. S. 376, 384 (1945); *Lloyd A. Fry Roofing Co.* v. *NLRB.* 216 F. 2d 273, 276 (9 Cir. 1954). If an employer is permitted to take unilateral action without even consulting the union, he will be able to undermine negotiations with respect to any one of the mandatory subjects of bargaining as effectively as if he altogether refused to bargain over it. Indeed, the failure to notify the union if there has been an opportunity to do so must in all but the most extreme circumstances signify an intent to deny the employees any role in decision-making with respect to the particular condition of employment which is involved. Such conduct may be entirely consistent with a sincere subjective intent to reach an agreement with the union on all other issues, but irrespective of the employer's state of mind it should constitute an unfair labor practice.

In this case the National Labor Relations Board charged the employer with having violated the duty to bargain by taking three steps unilaterally without notifying the union: granting merit increases, changing sick leave policy, and granting wage increases larger than those offered to the

union. In my opinion, the record supports the charge only with respect to the change in sick leave regulations.

In a notice posted at its plant on March 11, 1957, the employer announced that the sick leave rules were being changed so as to allow only five sick days per year in place of ten. Accumulation of unused days was doubled, so that an employee who used no days was no worse off than he had been under the old plan. However, the change, which was made without notice to the union, certainly affected those who were sick during the year. At that time, nego- [fol. 787] tiations had been suspended for several months, but the sick leave plan was still one of the subjects left open for discussion. By changing the rules without giving the union notice of any intention to do so, the employer disregarded the federal policy calling for joint deliberation between the employer and the union before a change is made. I would hold the unilateral step to be a *per se* refusal to bargain with respect to a subject of mandatory bargaining and a violation of §8(a) (5).

The merit increases, however, were part of the existing wage pattern and were not granted in such a way as to discriminate against union members. Although a change in merit review *procedure* could not be undertaken unilaterally, *NLRB* v. *Century Cement Mfg. Co.*, 208 F. 2d 84 (2 Cir. 1953); *NLRB* v. *Berkley Machine Works & Foundry Co.*, 189 F. 2d 904 (4. Cir. 1951), individual merit reviews are permissible, *White* v. *NLRB*, 255 F. 2d 564, 574 (5 Cir. 1958); *NLRB* v. *Superior Fireproof Door & Sash Co.*, —— F. 2d ——, —— (Slipsheet 1187, 1198 (2 Cir. 1961)).

Nor can it be said that the unilateral general wage increase was a refusal to bargain, although it amoun[illegible]d to restraint or coercion because it was higher than that offered to the union. See *supra*. By the time it was granted, the negotiations had reached an impasse. Having engaged in fruitless discussions for many months and learning that the union was ready to make few, if any, concessions, the employer was justified, insofar as his duty to bargain was concerned, in presuming that a general wage increase could be instituted unilaterally only. *NLRB* v. *Andrew Jergens Co.*, 175 F. 2d 130 (9 Cir. 1949); see *NLRB* v. *Sands Mfg. Co.*, 306 U. S. 332 (1939).

I would, therefore, modify the order of the Board so as to find a §8(a) (1) violation in that the employer offered [fol. 788] a greater wage increase to the individual employees than it did to the union and a §8(a) (5) violation (and, derivatively, another §8(a) (1) violation) in that the employer refused to bargain collectively about a change in sick leave policy. I would enforce the order as modified.

[fol. 789] In United States Court of Appeals, Second Circuit

Present: Hon. J. Edward Lumbard, Chief Judge, Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Circuit Judges.

National Labor Relations Board, Petitioner,

v.

Benne Katz, Alfred Finkel and Murry Katz, d/b/a Williamsburg Steel Products Company, Respondent

Judgment—April 11, 1961

Petitions for enforcement from the National Labor Relations Board,

This cause came to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that said enforcement be and it hereby is denied and that the action be and it hereby is remanded to the National Labor Relations Board for further proceedings consistent with the opinion of this Court.

[fol. 790] [File endorsement omitted.]

[fol. 791] UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK

I, A. Daniel Fusaro, Clerk of the United States Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from Vol. pg. 1-284; Vol. 2, pg. 285a to 790a, inclusive, contain a true and complete transcript of printed portions of the record and proceedings had in said Court, in the case of National Labor Relations Board, Petitioner, against Benne Katz, Alfred Finkel and Murry Katz, d/b/a Williamsburg Steel Products Company, Respondent as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-seventh day of June in the year of our Lord one thousand nine hundred and sixty-one, and of the Independence of the said United States the one hundred and eighty-fifth.

A. Daniel Fusaro, Clerk, by Niall F. O'Doherty, Chief Deputy Clerk. (Seal.)

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 792] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1961

No. 222

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

BENNE KATZ, et al.

ORDER ALLOWING CERTIORARI—October 9, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1961

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

BENNE KATZ, ALFRED FINKEL, AND MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Second Circuit entered in this case on April 11, 1961.

OPINIONS BELOW

The decision of the court of appeals (App. B, *infra*, pp. 17-42) is not yet reported. The findings of fact, conclusions of law, and order of the Board (R. 13-37)[1] are reported at 126 NLRB 288.

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[1] "R." refers to the portions of the record printed as an appendix to the brief filed by the Board in the court of appeals. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

JURISDICTION

The judgment of the court of appeals was entered on April 11, 1961 (App. B, *infra*, p. 42). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended, 29 U.S.C. 160(e).

QUESTION PRESENTED

Whether there is a violation of Sections 8(a)(5) and (1) of the National Labor Relations Act when, prior to the discontinuance of collective bargaining negotiations and the existence of any possible impasse, an employer, without notice to or consultation with the employees' bargaining representative, unilaterally places in effect new wage rates substantially in excess of those offered the representative, changes the sick leave policy, and grants numerous merit increases.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in Appendix A, *infra*, pp. 14-16.

STATEMENT

I. The Board's Findings of Fact

On July 5, 1956, the Board certified Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, herein called the Union, as collective bargaining representative of all technical employees at respondent Company's plant (R. 20; 6, 45). On the same day, the Board also issued separate certifications to the Union for similar units of employees at Superior Fire Proof Door and Sash Company, Triangle Steel Products Company, World Steel Products Corp., Pioneer Fire Proof Corp., and

City Steel Door Corp. (R. 20; 48). All of these employers, including the Company, were members of the Hollow Metal Door and Buck Association, herein called the Association (R. 20-21; 48).

On July 11, 1956, the Union, by letter, requested that the Company and the five other employers make arrangements as quickly as possible "for either individual or Association wide bargaining," and stated that within seven or eight days the Union would submit its proposal for a collective bargaining agreement (R. 21; 52, 261-262). The letter noted that, in accordance with "previous discussions and mutual understanding, the wage rates and/or increases shall be negotiated on an individual Employer basis * * *" (R. 21; 52, 261-262). On July 19, the Union in a letter to the Company and the same five employers set forth various subjects for collective bargaining (R. 21; 53, 263-267). The Union again stated that wage rates and increases were to be negotiated on an individual company basis (R. 21; 53, 266).

When the Company did not reply to these letters, J. L. Raimist, the Union business manager, put in several phone calls to Sidney D. Raphael, attorney for the Company and Association. No meeting was held until August 30, 1956, however (R. 21; 53-54). Eleven additional meetings were conducted between October 2, 1956, and May 13, 1957, but no final agreement was reached and no further negotiations occurred (R. 21; 58-69, 70-91). During the negotiations and prior to the existence of any impasse, the Company took the following unilateral actions with respect to wages and related benefits:

1. In its communication to the Company on July 19, 1956, the Union specifically mentioned merit increases

as one of the proposed subjects for collective bargaining. (R. 26; 53, 264). Raimist testified that, at the first meeting on August 30, it was "definitely established that there would be a joint review on merits," but that the details would be worked out at later meetings (R. 26; 57). On the other hand, Alfred Finkel, the Company partner responsible for labor relations, who participated in all the meetings, testified that at the August 30 meeting, and on October 2 and October 10, the subject was merely mentioned with the understanding that negotiations could be conducted at a later date (R. 26; 240, 248, 254). Nevertheless, in October 1956, the Company, without notice to or negotiation with the Union, granted 34 merit increases, and in January 1957, granted 20 similar merit increases (R. 26; 98-113, G.C. Ex. 30(a), (b), (c)). On several occasions Raimist vigorously protested that this action by the Company tended "to destroy the Union" (R. 26; 95).

2. On or about March 11, 1957, while negotiations were still in progress, the Company notified the employees in the bargaining unit, as well as its office personnel, that it was making a substantial change in its sick leave policy and that the change would be retroactive to January 1, 1957 (R. 27; 116-117, 275-276). The subject of sick leave had been discussed by the parties at three prior meetings, but no agreement had been reached (R. 27; 57, 62-63, 66). As in the case of the merit increases, the Union was not notified, and subsequently it filed a vigorous protest with the Company (R. 27; 76, 268-269). In its reply, the Company asserted that it did "not feel obligated to explain the matter to you or anyone else since we are not as yet

bound to you until an agreement has been reached between us" (R. 27; 76, 270).

3. In April 1957, Ernst Halpern, the Company's chief draftsman and supervisor of the employees in the bargaining unit, announced to the employees "that henceforth an automatic wage increase system would be in operation for them as follows: up to $74.99 per week—automatic increase of $5 per week every three months; from $75 to $90 per week—automatic increase of $5 per week every 6 months; over $90 per week—merit increases review every 6 months, raises to be granted in management's discretion on a merit basis" (R. 27; 177). This action was also taken without notice to or consultation with the Union (R. 27; 90). The increases were substantially better than those that the Company had previously offered the Union (R. 27; 81).

On May 13, 1957, negotiations between the Company and the Union came to an impasse. Subsequently, during the latter part of July, a meeting of the employees in the bargaining unit was held in the Company's drafting room (R. 24; 121-122). This meeting, which was conducted during working hours, lasted approximately two hours (R. 24; 146). Halpern was aware of the meeting, and the employees were paid for the time spent in attendance (R. 24; 180-181). Herbert Jacobson, coordinator for the Company and Halpern's aide, acknowledged that the meeting was convened to "do away with [the Union] as the bargaining agent" because the employees felt they "could do a better job [themselves] than * * * the Union had

done" (R. 24; 123-124). At the meeting, which was also attended by Edwin Wisniewski, the Company's chief draftsman, Jacobson read a proposed contract to be presented to the Company and explained the procedure of decertifying the Union as well as resignation from it (R. 24; 124, 152). By majority vote, the employees decided to present the proposed contract to the Company and to proceed with decertification (R. 24; 124-125). Shortly after this meeting, the Company granted liberal wage increases to nearly every employee in the unit (R. 25; 108-111). The increases exceeded those offered by the Company a few months earlier (R. 25; 81).

II. The Board's Conclusions and Order

Upon the foregoing facts, the Board found, as had the Trial Examiner, that the Company failed to discharge its bargaining obligation and thereby violated Section 8(a)(5) and (1) of the Act when, "without notifying or consulting with the Union," it granted merit increases in October 1956 and January 1957, changed sick leave policy on or about March 11, 1957, and announced a new automatic wage increase system in April 1957 (R. 13-14, 30-31). The Board further observed, as had the Trial Examiner, that the Company "undertook its unilateral actions before negotiations were discontinued in May, 1957, or before * * * the existence of any possible impasse." (R. 14, 30).

The Board specifically noted that it was construing "the Intermediate Report as finding violations *only* with respect to the above specified unilateral acts"; the Board refused to find that the Company "*generally* bargained in bad faith in the actual negotiations with

the Union," and therefore refused to "adopt the board statement in the Intermediate Report [R. 31] that '* * * Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union * * *'" (R. 14, n. 4 (emphasis added)).

The Board ordered the Company to cease and desist from the specific unfair labor practices found and from otherwise refusing to bargain with the Union. Affirmatively, the Board ordered the Company to bargain with the Union upon request and to post appropriate notices (R. 14-18).

III. The Decision of the Court of Appeals

The court of appeals (Lumbard, C.J., dissenting) held that, absent a finding by the Board that the employer had bargained in bad faith, the unilateral changes in wages and working conditions, even "occurring as they did during the negotiating of a collective bargaining agreement," did not constitute "a refusal to bargain collectively" within the meaning of Section 8(a)(5) of the Act (App. B, *infra*, p. 21).[2] In the Court's view, "a necessary requisite of a Section 8(a)(5) violation is a finding that the employer failed to bargain in good faith" (App. B, *infra*, p. 21), and "the fact of the unilateral change" does not necessarily require that inference. "An opportunity must first be given the employer to rebut the inference, and finally there must be a definite determination of the mental attitude of the employer" (App. B, *infra*, p. 30).

[2] The court noted that "the subject is not generally free from doubt" (App. B, *infra*, p. 21), and that its conclusion was in direct conflict with the decisions of the Courts of Appeals for the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits (App. B, *infra*, p. 32, n. 10).

The court further concluded that the Board's findings of violations of Section 8(a)(1) were not independently based but were "derived from the acts found to have violated § 8(a)(5) and that [those] violations, also, [were] unproved without the necessary finding that the employer failed to act in good faith" (App. B, *infra*, p. 21).

Because the court believed that "the Board's finding of an unfair labor practice impliedly proceeds from an erroneous view that specific unilateral acts, regardless of bad faith, may constitute violations of § 8(a)(5)," it remanded the case to the Board "in order that it may have an opportunity to take additional evidence, and make such findings as may be warranted by the record" (App. B, *infra*, p. 33).

Chief Judge Lumbard, dissenting, agreed with the majority that "the decisions of the Supreme Court reveal that no *per se* test of good faith should be applied and that an employer's intention should be judged in the light of all the circumstances." He believed, however, "that certain unilateral acts during the course of collective bargaining violate § 8(a)(5) apart from any finding with respect to good faith" (App. B, *infra*, p. 37). As he explained (App. B, *infra*, p. 39 (emphasis added)):

> Mere willingness to conclude an agreement with the union does not satisfy the employer's obligation; he must also confer with the union with respect to *each and every subject of mandatory bargaining*. A refusal to bargain within the meaning of § 8(d) need not be a total refusal. If an employer refuses to consult the union as to any subject with respect to which bargaining is man-

datory, he commits an unfair labor practice, no matter how sincere his intent.[8]

REASONS FOR GRANTING THE WRIT

1. As the court below recognizes (App. B, *infra*, p. 32, n. 10), its holding—that an employer, who makes changes in wages and other conditions of employment during negotiation and prior to an impasse without notifying or consulting the employees' bargaining agent, does not violate his bargaining obligation under the Act absent a showing that he was motivated by bad faith—is in direct conflict with the decisions of several other courts of appeal. See *Lloyd A. Fry Roofing Co.* v. *National Labor Relations Board*, 216 F. 2d 273, 276 (C.A. 9); *Armstrong Cork Co.* v. *National Labor Relations Board*, 211 F. 2d 843, 847-848 (C.A. 5); *National Labor Relations Board* v. *Dealers Engine Rebuilders, Inc.*, 199 F. 2d 249, 251-252 (C.A. 8); *Superior Engraving Co.* v. *National Labor Relations Board*, 183

[8] On this reasoning, Chief Judge Lumbard would have found that, by unilaterally changing sick leave policy during the negotiations, "the employer refused to bargain with respect to a mandatory subject of bargaining in violation of § 8(a)(5)" (App. B, *infra*, p. 35). He would also have enforced the "order of the Board insofar as it held the unilateral grant of a wage increase which was higher than that offered to the union to be restraint or coercion under § 8(a)(1)" (App. B, *infra*, p. 36), but would not have found the unilateral wage increase to be a violation of the bargaining obligation because "[b]y the time it was granted, the negotiations had reached an impasse" (App. B, *infra*, p. 41). However, he would have found no violation respecting the merit increases on the ground that they "were part of the existing wage pattern" and were not granted in such a way as to discriminate against union members. That is, in his view, although "a change in merit review *procedure* could not be undertaken unilaterally * * * individual merit reviews are permissible * * *" (App. B, *infra*, p. 41 (emphasis in the original)).

F. 2d 783, 790 (C.A. 7), certiorari denied, 340 U.S. 930. See, also, *National Labor Relations Board* v. *J. H. Allison & Co.*, 165 F. 2d 766 (C.A. 6), certiorari denied, 335 U.S. 814; *Great Southern Trucking Co.* v. *National Labor Relations Board*, 127 F. 2d 180, 186 (C.A. 4), certiorari denied, 317 U.S. 652. These decisions rest on the contrary principle that unilateral changes in wages and working conditions effected during negotiations are violative of Section 8(a)(5) and (1) of the Act, irrespective of the employer's general motives or the sincerity of his desire to reach a general agreement. Since the issue in the present case continually arises, the conflict of the circuits should be resolved by this Court.

2. Moreover, the holding of the court below is contrary to the principles which are implicit in prior decisions of this Court. See, *e.g.*, *J. I. Case Co.* v. *National Labor Relations Board*, 321 U.S. 332, 338-339; *Medo Photo Corp.* v. *National Labor Relations Board*, 321 U.S. 678, 683-686; *May Department Stores Co.* v. *National Labor Relations Board*, 326 U.S. 376; cf. *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U.S. 217; *National Labor Relations Board* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349.

According to these principles of collective bargaining, terms and conditions of employment are not to be fixed by the employer alone but, if possible, jointly by the representatives of both the union and the employer. The employer therefore has a statutory duty to "meet and treat" with the employees' representative regardless of his good or bad faith. And this duty extends to each and every subject falling within the statutory

phrase "wages, hours, and other terms and conditions of employment."

The court of appeals fell into error by confusing the problem in the present case with the problem presented when an employer takes unilateral action upon a subject *after* consulting, but without the assent of, the union. To change a term of employment unilaterally prior to reaching an impasse and without consulting the union concerning the proposed change denies the union the opportunity to "meet and treat" just as categorically as if the employer had refused even to negotiate concerning the subject matter of the unilateral action.[4] Nor is the case changed by the pendency of general negotiations concerning terms and conditions of employment which may take effect sometime in the future. The unilateral action prejudices the general negotiations and, at the very least, the unilaterally-imposed terms will apply temporarily. There is, of course, the same duty to bargain about temporary conditions of employment as about those of longer duration.

Thus, the case is one in which the employer has, in effect, categorically removed certain terms and conditions of employment from the area of collective bargaining at least for a temporary period. Under such circumstances the Board is justified in concluding that the employer has violated Section 8(a)(1) and (5) with respect to the subject matter of the unilateral action without making any further finding as to

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[4] The same reasoning would also hold true if the employer, after impasse, would unilaterally grant to the employees terms more favorable than those previously discussed with the union. See *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U.S. 217.

whether, on the subjects on which he did bargain, the employer was negotiating in good faith. Cf. *Richfield Oil Corp.* v. *National Labor Relations Board*, 231 F. 2d 717 (C.A. D.C.), certiorari denied, 351 U.S. 909; *Inland Steel Co.* v. *National Labor Relations Board*, 170 F. 2d 247 (C.A. 7), certiorari denied, 336 U.S. 960. As the Court stated in *May Department Stores Co.* v. *National Labor Relations Board, supra*, 326 U.S. at 384, 385: "Employer action to bring about changes in wage scales without consultation and negotiation with the certified representative of its employees cannot, we think, logically or realistically, be distinguished from bargaining with individuals or minorities. * * * Such unilateral action minimizes the influence of organized bargaining. It interferes with the right of self-organization by emphasizing to the employees that there is no necessity for a collective bargaining agent."

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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STUART ROTHMAN,
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July, 1961.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but

such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an inter-

vening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Sec. 9. (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 82—October Term, 1960

(Argued November 15, 1960 Decided April 11, 1961)

Docket No. 26289

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY, *Respondent*.

Before:

LUMBARD, *Chief Judge*,
WATERMAN and MOORE, *Circuit Judges*.

National Labor Relations Board petitions to enforce its order against Respondent on ground that Respondent violated 29 U. S. C. A. §§ 158(a)(1) and 158(a)(5). Enforcement denied. Cause remanded.

WATERMAN, *Circuit Judge:*

The National Labor Relations Board has petitioned this court pursuant to Section 10(e) of the National Labor Relations Act (NLRA) for enforcement of an order of January 22, 1960 it issued against the respondent, Benne Katz, Alfred Finkel and Murray Katz, d/b/a Williamsburg Steel Products Company (Employer).

The General Counsel's Complaint and Notice of Hearing was issued to Employer on September 8, 1958 based upon charges of unfair labor practices made by Architectural & Engineering Guild, Local 66, American Federation of Technical Engineers AFL-CIO (Union). The Complaint alleged that "Employer did refuse and continues to refuse to bargain collectively with Local 66 as the exclusive bargaining representatives of all the [technical engineering em-

ployees of Employer's Engineering Department in New York] in that:

"(a) In or about March 1957, and at various times thereafter to date, Respondent Employer unilaterally changed the terms and conditions of employment relating to sick leave of employees in the unit described above.

"(b) In or about April 1957, and at various times thereafter to date, Respondent Employer unilaterally changed existing wage rates and other terms and conditions of employment of employees in the unit described above.

"(c) Since in or about March 1957, and at various times thereafter to date, Respondent Employer bargained directly and individually with employees in the unit described above * * *, concerning rates of pay, wages, hours of employment, or other terms and conditions of employment.

"(d) In or about June and July 1957, Respondent Employer, through its agents, supervisors or representatives, including Herbert Jacobson and others unknown, aided and assisted employees in the unit described above * * * to repudiate Local 66 as their bargaining representative.

"(e) In or about June, July and August 1957, and at various unknown times thereafter to date, Respondent Employer, in derogation of Local 66's representative status, through Respondent Employer's agents, supervisors or representatives including Jacobson, Wisniewski and others unknown, publicized, sponsored, approved, permitted, attended and participated in meetings on its premises of employees in the unit described above."

These allegations were claimed to constitute separate unfair labor practices with in the meaning of Sec-

tions 8(a)(1) and 8(a)(5) of the NLRA, 29 U. S. C. §§ 158(a)(1), 158 (a)(5).

After Employer's answer was filed a long contested hearing ensued before a Trial Examiner in which, as appears to be normally the case, two completely divergent versions of the history of the collective bargaining of the parties were presented. The Trial Examiner chose to accept the version presented by the Board's counsel, and his findings were unfavorable in every respect to Employer. He found that subsequent to the certification of Union on July 5, 1956 and during the negotiating of an initial collective bargaining agreement the following acts of Employer occurred:

> (a) In October 1956 and January 1957 Employer unilaterally granted merit increases to its employees without notice to or negotiation with Union.
>
> (b) On or about March 11, 1957 Employer unilaterally made a substantial change in its sick leave policy without notice to Union.
>
> (c) In April 1957 Employer announced a new system of wage increases: "These increases were announced without notice to, or consultation with, the Union and were substantially better than what Respondent had previously offered the Union."

The Trial Examiner next considered and rejected the reasons advanced by Employer explaining the action taken. He concluded:

> "Rather than demonstrating bad faith bargaining by the Union, the entire record compels the conclusion that it was Respondent's conduct which brought the negotiations to naught. Thus, Respondent's unilateral action heretofore found, 'while negotiations were still continuing, and in complete disregard of the Union's status, provides the final insight into Respondent's conduct of the

negotiations with the Union. It clearly shows that * * * *Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union as required by the provisions of the Act.'* (Emphasis supplied.)

"On the entire record I find and conclude that by taking the unilateral action above found before any claimed impasse was reached, *and while negotiations were pending,* Respondent did so in clear disregard of its obligation to bargain with the Unon as the exclusive bargaining representative of its employees, and thereby undermined the authority which the Act bestowed upon the Union. By that conduct, Respondent violated Section 8(a) (1) and (5) of the Act. *Medo Photo Supply Corporation* v. *N. L. R. B.,* 321 U. S. 678, 683-684; *May Department Stores Co.* v. *N. L. R. B.,* 326 U. S. 376; *N. L. R. B.* v. *Crompton-Highland Mills, Inc.,* 337 U. S. 217."

In a short decision the Board accepted the Examiner's factual findings (a), (b) and (c) above set forth in the second preceding paragraph. It rejected the Examiner's finding that Employer had failed to bargain in good faith,[1] but interpreted the unilateral acts as having been in themselves unfair labor practices within the purview of §§ 8(a) (1) and 8(a)(5).

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[1] "We construe the Intermediate Report as finding violations only with respect to the above specified unilateral acts. As the General Counsel filed no exceptions, we do not pass on any other allegations in the complaint. There is no allegation in the complaint that the Respondent generally bargained in bad faith in the actual negotiations with the Union. Therefore, we do not adopt the board [sic] statement in the Intermediate Report that '* * * Respondent was merely going through the motions of collective bargaining without a gennine intention of trying to negotiate an agreement with the Union. * * *' "

An order was issued directing Employer to cease and desist from:

(a) "Unilaterally changing wages, rates of pay, or sick leave, or granting merit increases, *or in any similar or related manner refusing to bargain collectively* with [Union] * * *" (Emphasis supplied.)

(b) "Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with the Union * * *"

And Employer was also affirmatively directed to bargain collectively if requested to do so.

We are of the opinion that the unilateral acts here complained of, occurring as they did during the negotiating of a collective bargaining agreement, do not *per se* constitute a refusal to bargain collectively and *per se* are not violative of § 8(a)(5). While the subject is not generally free from doubt, it is our conclusion that in the posture of this case a necessary requisite of a Section 8(a)(5) violation is a finding that the employer failed to bargain in good faith. Moreover, we conclude that here the § 8(a)(1) violations the Board has found derived from the acts found to have violated § 8(a)(5) and that these violations, also, are unproved without the necessary finding that the employer failed to act in good faith.

I

Section 8(a)(5) provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) of this title."[2]

[2] Section 9(a) of the NLRA, 29 U. S. C. A. § 159(a) provides:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect of rates of pay, wages, hours of employment, or other conditions of employment: * * *"

Sections 8(a)(5) (then §8(5)) and 9(a) were part of the original National Labor Relations Act of 1935 and were early interpreted to require that in the interest of industrial peace the employer confer and negotiate with the accredited representative of his employees, *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937). However, the act was not read *to compel agreement*. *NLRB* v. *Jones & Laughlin Steel Corp., supra,* at 45. Therefore, it is not difficult to find a violation of § 8(a)(5) where the employer completely refuses to confer and to negotiate with the union representative of his employees.[3] On the other hand, it is difficult indeed to determine whether the employer is in fact negotiating and conferring in an attempt to resolve differences with his employees, i.e., bargaining "in good faith," once the employer meets the union at the collective bargaining table. Such a determination rests upon a subjective evaluation of the employer's attitude.[4] This evaluation can only be effectively made in terms of the complete bargaining situation.

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[3] For cases finding such violations see *Mays Department Stores* v. *NLRB*, 326 U.S. 376 (1945); *Medo Photo Supply Corp.* v. *NLRB*, 321 U.S. 678 (1944) discussed *infra*. See also *NLRB* v. *Parma Water Lifter Co.*, 211 F. 2d 258 (9 Cir.), cert. denied, 348 U.S. 829 (1954); *NLRB* v. *Burton-Dixie Corp.*, 210 F. 2d 199 (10 Cir. 1954). Mere attendance at meetings by an employer in order to inform the union that he will not bargain is a refusal to bargain, *NLRB* v. *Israel Putnam Mills*, 197 F. 2d 116 (2 Cir. 1952). The refusal to bargain may concern only one of the many subjects of collective bargaining. See *NLRB* v. *Berkley Machine Works*, 189 F. 2d 904 (4 Cir. 1951) (wages and merit increases); *NLRB* v. *General Motors Corp.*, 179 F. 2d 221 (2 Cir. 1950) (group insurance program).

[4] *NLRB* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131 (1 Cir.), cert. denied, 346 U.S. 887 (1953). Judge Magruder declared that: "The ultimate issue whether the Company conducted its bargaining negotiations in good faith involves a finding of motive or state of mind which can only be inferred from circumstantial evidence." 205 F. 2d at 139-40.

In 1947 Congress re-evaluated the NLRA. At that time there was some concern expressed in the House of Representatives over the vagueness of the concept of the employer's duty to "bargain in good faith." It was suggested that perhaps a statutory definition of "collective bargaining" would solve that vagueness for there would then be an objective standard governing an employer's actions, which, if not met by the employer, would thereby constitute a refusal to bargain and consequently be a violation of §8(a)(5) A formalistic, procedural definition of "collective bargaining" was included in the Bill that passed the House (H. R. 3020, 80th Cong. 1st Sess. § 2(11) (1947)). See I *Legislative History of the Labor-Management Reporting and Disclosure Act of 1947*, at 311. Senate amendments to the House Bill contained no such definition. The Senate desired to retain and make statutory the subjective test developed by adjudication under the original 1935 Act and refused to concur in the inclusion of the rigid definition of "collective bargaining" desired by the House. It was the Senate view that the approach the House proposed would retard rather than advance the course of collective bargaining and the cause of industrial peace, for the employer's true intent would be immaterial and a recalcitrant employer need only *pro forma* comply with procedural provisions to avoid committing an unfair labor practice. A Committee of Conference report recommended the adoption of the Senate's amendment. This report was accepted by both Houses and hence the "good faith" test was enacted into law, becoming Section 8(d) of the present act (29 U. S. C. A. § 158(d)). See H. R. Rep. No. 510, 80th Cong. 1st Sess. 34-35 (1947). It provides:

> "(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respects to wages, hours,

> and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *"

And a corresponding duty to bargain in good faith was imposed upon the union by Section 8(b)(3) of that Act which provides that it shall be an unfair labor practice for a labor organization "to refuse to bargain collectively with an employer." 61 Stat. 141 (1947), 29 U. S. C. A. § 158(b)(3). It is significant that this statutory test has remained unchanged from 1947 to date even though the Act was largely amended in other particulars in 1951 and in 1959. Thus the development and future design of the test of "bargaining in good faith" was left to adjudicative development through the decisions of the National Labor Relations Board and of the courts.[5]

The NLRB urges upon this court that unilateral action taken by an employer regarding bargaining matters when employees are represented by a Board certified bargaining agent is completely inconsistent with the principle of collective bargaining and conclusively determines that the employer in so doing was not acting in good faith. The Board cites *NLRB* v. *Crompton-Highland Mills*, 337 U. S. 217 (1949), as authority for this proposition. Admittedly, this approach on the part of the NLRB is consistent with a number of its administrative decisions. See, e.g., *Union Mfg. Co.*, 96 NLRB 792 (1951); *Sullivan Dry Dock & Repair Corp.*, 67 NLRB 627 (1946). Our consideration of *NLRB* v. *Crompton-Highland Mills, supra*, in conjunction with other relevant

[5] See *NLRB* v. *American Nat'l Ins. Co.*, 343 U.S. 395, 401-404 (1952) for a summary of the legislative history of the 1947 Act.

Supreme Court cases interpreting § 8(a)(5) and its predecessor § 8(5) convinces us that the NLRB has erred in its interpretation.

NLRB v. *Crompton-Highland Mills, supra; Mays Department Stores Co.* v. *NLRB*, 326 U. S. 376 (1945); and *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678 (1944) were decided under Section 8(5) of the 1935 Act. Both *Medo* and *Mays* are significantly different from the present case. In *Medo* the employer negotiated independently with a group of employees and agreed to grant a wage increase in return for a repudiation of the union. There can be no doubt that this was a flagrant violation of Section 8(5) as a refusal to bargain. *Mays*, too, involved a situation where the employer completely refused to recognize and bargain with the Board certified union. The *Crompton-Highland Mills* case is closer to the case at issue. In *Crompton* there had been extended negotiations which had reached an impasse. Thereafter, without prior consultation with the union, the employer granted a unilateral wage increase substantially in excess of anything previously offered the union. This action was interpreted by the Board to show that the employer was not acting in good faith during the negotiations. The reasons the employer advanced to justify the unilateral increase were rejected by the Board, and it is important to note, of course, that the Board made an express finding that the employer had failed to bargain in good faith. The Court affirmed the Board's findings.

Subsequent to the amendments of 1947 by which, as discussed above, § 8(5) became § 8(a)(5) without any change in text, the Supreme Court decided *NLRB* v. *Insurance Agents' Union*, 361 U. S. 477 (1960); *NLRB* v. *Wooster Division of Borg-Warner Corp.*, 356 U. S. 342 (1958); *NLRB* v. *Truitt Mfg. Co.*, 351 U. S. 149 (1956); *NLRB* v. *American Nat'l Ins. Co.*, 343 U. S. 395 (1952); *NLRB* v. *Mexia Textile Mills*, 339 U. S. 563 (1950); and *NLRB* v. *Pool Mfg. Co.*, 339 U. S.

577 (1950). *Mexia* and *Pool* were companion cases primarily dealing with a problem which arose with respect to the enforcement of the Board's orders where §8(a)(5) violations had been found. In both cases the "failure to bargain was *manifest from evidence*"[6] of incidents that occurred during negotiations—incidents that included, among others, a unilateral wage increase and the deliberate shunting of union officials from one company official to another, in order to make any progress impossible. Once again the Trial Examiner and the Board concluded that these various incidents indicated "an unmistakable effort to escape genuine collective bargaining." 339 U. S. 563, at 565. In *American National Insurance Co.* the employer, without prior consultation with the union, instituted unilateral changes in working conditions by the establishment of new night shifts and the introduction of a new system of lunch hours. The Trial Examiner found that "upon review of the entire negotiations, including respondent's unilateral action in changing working conditions during the bargaining * * * respondent [employer] had refused to bargain in a good faith effort to reach agreement."[7] This finding was adopted by the Board and subsequently affirmed by the Court of Appeals for the Fifth Circuit, 187 F. 2d 307 (1951). Commenting upon the decision of the Fifth Circuit the Supreme Court said: "* * * respondents' unilateral action in changing working conditions during bargaining *does support a finding* that respondent had not bargained collectively in good faith as required by the Act." 343 U. S. 395, at 401. (Emphasis supplied.) In its later discussion of the question actually before it on appeal, i.e., whether an employer's desire to insert a management function clause

[6] 339 U.S. 563, at 565.

[7] This language, 343 U.S. 395, at 400, is the summarization of the Trial Examiner's findings by the Supreme Court.

was a *per se* violation of the Act, the Supreme Court stated that a management functions clause, although it gave an employer the initial responsibility for certain working conditions, was assuredly a valid clause. Therefore, bargaining for such a clause was an employer's prerogative—the only requirement being that he bargain for it in good faith. The Court went on to say: "The court below correctly applied the statutory standard of good faith bargaining to the facts of this case. It held that the evidence, *viewed as a whole*, does not show that respondent refused to bargain in good faith by reason of its bargaining for a management function clause as a counterproposal to the Union's demand for unlimited arbitration." 343 U. S. 395, at 409. (Emphasis supplied.)

In *Truitt* the Supreme Court enforced a Board order that the Court of Appeals for the Fourth Circuit had refused to enforce and held that a "refusal to attempt to substantiate a claim of inability to pay increased wages may support a finding of a failure to bargain in good faith." 351 U. S. 149, at 153. In order to substantiate his good faith, therefore, an employer could be required to make a reasonable attempt, one not overly burdensome to him, to justify his claim of slender finances. But, said the Supreme Court, "We do not hold * * * that in every case in which economic inability is raised as an argument against increased wages it automatically follows that the employers are entitled to substantiating evidence. Each case must turn upon its particular facts. The inquiry must always be whether or not *under the circumstances of the particular case* the statutory obligation to bargain in good faith has been met." 351 U. S. 149, at 153-54. (Emphasis supplied.)[8]

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[8] The Supreme Court in *Truitt* approved of *NLRB* v. *Jacobs Mfg. Co.*, 196 F. 2d 680 (2 Cir. 1952) in which this court enforced a Board order based upon a finding of a lack of good faith on

The employer in Borg-Warner insisted upon the inclusion of certain clauses in the bargaining agreement that the Court held were not the subject of mandatory bargaining under § 8(d), and therefore his insistence was found to demonstrate that the employer was not bargaining in good faith, and, in effect, was committing a *per se* violation of § 8(a)(5). *Borg-Warner* is thus distinguished from *American National Insurance Co.* where the clauses insisted upon were subjects of mandatory bargaining. *Borg-Warner* appears difficult to reconcile with the prior pattern of adjudication which has required a finding of a lack of good faith based on consideration of the *totality* of the collective bargaining events. In a dissenting opinion, 356 U. S. 351, Justice Harlan, joined by Justices Clark and Whittaker, reminded the Court of the long prior history that had avoided rigid restrictions on the bargaining process. He pointed out that unions might be severely circumscribed in their activities if all that unions could bargain for were those matters which were subjects of mandatory bargaining under § 8(d). Moreover, Justice Harlan stated that he was unable to grasp the majority's reasoning that an employer in good faith could propose matters not the subject of mandatory bargaining and that such subjects could properly be included in a collective bargaining agreement, but that the insistence by the employer upon the inclusion of such matters in the agreement was *per se* indicative of a lack of good faith and a violation of the Act.

The Court returned to its former approaches in the next case to come before it. In *NLRB* v. *Insurance Agents' International Union*, 361 U. S. 477, the Court construed § 8(b)(3) of the Act—which, as described above, is as to unions the corollary of Section 8(a)(5)

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the part of the employer because the employer "refused to disclose pertinent facts to show that it had, in good faith, reached its decision that it could not afford to meet the union demands." 196 F. 2d at 684.

—to mean that economic sanctions exerted by a union were not *per se* violative of § 8(b)(3) but the totality of the behavior of the union as portrayed throughout the entire negotiations must be judged by the good faith test. The Court again retraced the history of the affirmative duty placed by the Act upon both union and employer to bargain collectively in good faith. It again conceived the function of the National Labor Relations Board to be that of an agency existing for the purpose of encouraging parties to reach collective bargaining agreements, and that once this function is concluded the parties must be left to their own uninterfered-with devices provided only that they bargain fairly and are desirous of reaching agreement.

Recognizing that so subjective a standard necessarily produces, case by case, many divergent decisions, how, then, should this court approach the unilateral acts of Williamsburg Steel Products Company which the Board urges upon us are *per se* violations of § 8(a)(5)? One scholar in the field has stated the general problem as follows:

> "Whether unilateral action is an unfair labor practice per se depends on whether the National Labor Relations Act seeks to compel joint participation or leaves the joint participation to evolve without additional legal sanction after it has created opposing concentrations of economic power." Cox, *Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401, 1424 (1958).

We are convinced by the legislative and judicial history of the NLRA that it is the latter alternative which the Act contemplates. We believe that with an overall consistency through all the cases, the Supreme Court has concerned itself with the totality of negotiations and has been loath to look at specific acts as being violative of the Act apart from the bargaining totality. *NLRB v. Insurance Agents' International*

Union, supra, the Court's most recent word, supports our position. If the NLRB were given the power to involve itself with the myriad specific acts that make up a labor-management negotiation we would no longer have employer-employee negotiation but enforced governmental arbitration.

It is true, as the Board suggests, that the most plausible inference to be drawn from a unilateral change in working conditions, mandatory subjects of collective bargaining under § 8(d), is that the employer is no longer bargaining in good faith. And the nature and extent of the changes so instituted may give added weight to such an inference.[9] However, the fact of the unilateral change does not require the inference of a failure to bargain in good faith and the consequent finding that there has been a violation of § 8(a)(5). The evidence must be tested within the framework of the entire bargaining situation. An opportunity must first be given the employer to rebut the inference, and finally there must be a definite determination of the mental attitude of the employer. The language of the Supreme Court indicates that, beginning with *Crompton* and concluding with *Insurance Agents' Union*, the above described approach is the correct one.[10]

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[9] Compare *NLRB* v. *Bradley Washfountain Co.*, 192 F. 2d 144 (7 Cir. 1951) with *NLRB* v. *National Shoes*, 208 F. 2d 688 (2 Cir. 1953).

[10] We are reinforced in our approach by the history of § 8(a)(5) in our own Circuit. *NLRB* v. *Jacobs Mfg. Co.*, *supra* at footnote 8, defined bargaining in good faith to mean "cooperation in the give and take of personal conferences with a willingness to let ultimate decision follow a fair opportunity for the presentation of pertinent facts and arguments." 196 F. 2d 680, at 683. Considering the totality of events the court enforced a Board order based upon a Board finding that the employer had failed to bargain in good faith.

NLRB v. *Century Cement Mfg. Co.*, 208 F. 2d 84 (2 Cir. 1953) applied the test as so defined to an employer who had unilaterally instituted merit raises and wages increases. The court declared

This court is next presented with the problem of whether we ourselves may test the inference arising from Employer's unilateral acts on a petition for enforcement or whether we must remand to the National Labor Relations Board for its initial determination of this issue. In all the Supreme Court cases that we have discussed in which the Board's order was enforced there had been a Board finding that the respondent-employer had failed to bargain in good faith. Here, the Board explicitly declined to do so. Justice Frankfurter, concurring in *NLRB* v. *Insurance Agents' Union, supra*, which struck down the Board's

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that: "Such unilateral action as to subject matter proper for bargaining negotiations was *further evidence* of a failure to bargain in good faith in violation of §§ 8(a)(5) and (1) of the Act." (208 F. 2d 84, at 86) and enforced the Board's order based upon a Board finding that the employer had failed to bargain in good faith. (Emphasis supplied.)

In *NLRB* v. *National Shoes, supra* at footnote 9, the Board petitioned this court for enforcement of its order based upon a finding that the employer refused to bargain. We enforced that order declaring that: "The problem is essentially to determine from the record the intention or the state of mind of respondents [employers] in the matter of their negotiations with the union. In this proceeding, as in many others, such a determination is a question of fact to be determined from the record." 208 F. 2d 691-692. To be sure, there was some gratuitous dicta of which we disapprove to the effect that a unilateral wage increase was a *per se* violation of § 8(a)(5). See also *NLRB* v. *Acme Air Appliance Co.*, 117 F. 2d 417 (2 Cir. 1941); *NLRB* v. *Superior Fireproof Door & Sash Co.* (2 Cir., March 28, 1961).

Cases from other U. S. Courts of Appeals in accord with our own position are: *Joy Silk Mills* v. *NLRB*, 185 F. 2d 732 (D. C. Cir. 1950), cert. denied, 341 U.S. 914 (1951); *NLRB* v. *Reed & Prince Mfg. Co., supra* at footnote 4 (1 Cir.); *NLRB* v. *Landis Tool Co.*, 193 F. 2d 279 (3 Cir. 1952); *NLRB* v. *Norfolk Shipbuilding & Drydock Corp.*, 195 F. 2d 632 (4 Cir. 1952); *White* v. *NLRB*, 255 F. 2d 564 (5 Cir. 1958); *Cone Bros. Contracting Co.* v. *NLRB*, 235 F. 2d 37 (5 Cir.), cert. denied, 352 U.S. 916 (1956); *NLRB* v. *Harris*, 200 F. 2d 656 (5 Cir. 1953); *Majure* v. *NLRB*, 198 F. 2d 735 (5 Cir. 1952); *NLRB* v. *Booker*, 180 F. 2d 727 (5 Cir. 1950); *NLRB* v. *Dixie Motor Coach Corp.*, 128 F. 2d 201 (5 Cir. 1942); *NLRB* v. *Bradley Washfountain Co., supra* at

finding of a *per se* violation, disposed of this problem for us in the following language:

> "In enforcing the duty to bargain *the Board must find the ultimate fact* whether, in the case before it and in the context of all its circumstances, the respondent has engaged in bargaining without the sincere desire to reach agreement which the Act commands. 361 U. S. at 495." (Emphasis supplied.)

This interpretation of the proper duty of the Board is consistent with that found in all of the cases decided by the Court and is in accord with the legislative history of the Act.

In this case the Board has not made a finding that Employer failed to bargain in good faith—in fact, the

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footnote 9 (7 Cir.); *NLRB* v. *O'Keefe & Merritt Mfg. Co.*, 178 F. 2d 445 (9 Cir. 1949); *NLRB* v. *Lettie Lee, Inc.*, 140 F. 2d 243 (9 Cir. 1944); *NLRB* v. *F. M. Reeves & Sons, Inc.*, 273 F. 2d 710 (10 Cir. 1959); *NLRB* v. *Hamilton*, 220 F. 2d 492 (10 Cir. 1955).

In the following cases Board orders, based upon a finding of a lack of good faith were enforced, the various courts considering the entire record. However, in each there was language, unnecessary to the decision, that might indicate that unilateral changes in working conditions were *per se* violations of § 8(a)(5). *Great Southern Trucking Co.* v. *NLRB*, 127 F. 2d 180 (4 Cir.), cert. denied, 317 U.S. 652 (1942); *NLRB* v. *Herman Sausage Co.*, 275 F. 2d 229 (5 Cir. 1960); *NLRB* v. *Whittier Mills Co.*, 111 F. 2d 474 (5 Cir. 1940); *NLRB* v. *Barrett Co.*, 135 F. 2d 959 (7 Cir. 1943); *NLRB* v. *Andrew Jergens Co.*, 175 F. 2d 130 (9 Cir.), cert. denied, 338 U.S. 827 (1949). See also *Pacific Gamble Robinson Co.* v. *NLRB*, 186 F. 2d 106 (6 Cir. 1950) (enforcement denied).

For decisions disagreeing with the result reached herein see *Armstrong Cork Co.* v. *NLRB*, 211 F. 2d 843 (5 Cir. 1954); *NLRB* v. *J. H. Allison & Co.*, 165 F. 2d 766 (6 Cir.) (see dissent), cert. denied, 355 U.S. 814 (1948); *Superior Engraving Co.* v. *NLRB*, 183 F. 2d 783 (7 Cir. 1950), cert. denied, 340 U.S. 930 (1951); *NLRB* v. *Dealers Engine Rebuilders*, 199 F. 2d 249 (8 Cir. 1952); *Lloyd A. Fry Roofing Co.* v. *NLRB*, 216 F. 2d 273 (9 Cir. 1954).

Trial Examiner's finding of bad faith was expressly rejected by it. Although we might, therefore, be justified in denying enforcement without remand, we think that since the Board's finding of an unfair labor practice impliedly proceeds from an erroneous view that specific unilateral acts, regardless of bad faith, may constitute violations of § 8(a)(5), the case should be remanded to the Board in order that it may have an opportunity to take additional evidence, and make such findings as may be warranted by the record.

II

There remains for our consideration the Board's finding that the unilateral acts were violative of § 8(a)(1) as well as § 8(a)(5). Section 8(a)(1) provides:

> "(a) It shall be an unfair labor practice for an employer—
>
> "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;"

This subsection is broadly drawn and it guarantees to employees their basic rights under the NLRA. Necessarily it encompasses many of the more specific violations contained in the succeeding subsections 8(a)(2)-8(a)(5). It has become customary for the Board to find that activities violative of subsections of § 8(a) that follow § 8(a)(1) are also violative of § 8(a)(1). In a Section 8(a)(5) situation this often results in a Board finding that the employer has failed to bargain in good faith in violation of § 8(a)(5), and that this failure to bargain in good faith is an interference with the exercise of the rights of his employees and thereby violative of § 8(a)(1). See *NLRB* v. *Crompton-Highland Mills, supra; NLRB* v. *Express Pub. Co.*, 312 U.S. 426 (1941; *NLRB* v. *National Shoes*, 208 F. 2d 688 (2

Cir. 1953; *NLRB* v. *Niles-Bement Pond Co.*, 199 F. 2d 713 (2 Cir. 1952). The situation just described is different from ones where there are separate independent acts that violate § 8(a)(1). See, e.g., *Mays Department Stores* v. *NLRB, supra; Medo Photo Supply Corp.* v. *NLRB, supra.* We have a situation before us in which the section 8(a)(1) violations were derivative —similar to the cases cited above and very different from *Mays.*

The complaint stated that Employer refused to bargain, enumerated the acts which evidenced the refusal to bargain, and charged that therefore §§ 8(a)(1) and 8(a)(5) were both violated. The Trial Examiner found that Employer had violated his duty to bargain with Union under § 8(a)(5) and hence also violated § 8(a)(1). As discussed previously, the Board found Employer's unilateral acts violative of the two sections but rejected the examiner's finding that Employer did not bargain in good faith. However, the Board's order, set out herein, was directed exclusively to the refusal to bargain. This history leads us to believe that the complaint was based upon an alleged § 8(a)(5) refusal to bargain, that the alleged § 8(a)(1) violations are derivative only, and that the finding that § 8(a)(1) has been violated must be reviewed in the light of the review we have ordered the Board to make with respect to its finding that § 8(a)(5) was violated.

Enforcement denied. Cause remanded to the National Labor Relations Board for further proceedings consistent with this opinion.

LUMBARD, *Chief Judge* (dissenting):

In my opinion there is support in the record for the Board's finding that the employer coerced and restrained the employees in violation of § 8(a)(1) of the National Labor Relations Act, 28 U.S.C. § 158(a)(1),

by granting a unilateral wage increase higher than that offered to the union. I think there is also sufficient evidence in the record to support the Board's conclusion that the employer refused to bargain with respect to a mandatory subject of bargaining in violation of § 8(a)(5) by unilaterally changing sick leave policy during the negotiations. I would not remand the case to the Board to make a finding with regard to the employer's good faith since no allegation of bad faith bargaining was made in the complaint and there is insufficient evidence in the record as a whole to support a finding that the employer bargained in bad faith. I would modify the order of the Board so as to prohibit only the general wage increase and the change in sick leave policy, and I would grant enforcement of the order as modified.

As I read Judge Waterman's opinion, the majority's view is that the acts committed here by the employer could amount to unfair labor practices only if the Board found that the employer was bargaining in bad faith and had no intention of reaching an agreement with the union. I think that neither reason nor precedent supports these conclusions.

I.

My brethren dispose of the charges made against the employer for violation of § 8(a)(1) of the Act by deciding that they were "derivative" and dependent on the finding that § 8(a)(5) had been violated. I disagree. The language of both the complaint filed with the Board and the Intermediate Report of the Trial Examiner reveal that separate § 8(a)(1) violations were alleged and found.[1]

[1] After listing the various unilateral acts which the majority opinion quotes *supra* at pages 1336, 1337 and 1338, the complaint read as follows:

"11. By the acts described above in paragraph 10, *and by each of said acts*, Respondent Employer did engage in and is

I would enforce the order of the Board insofar as it held the unilateral grant of a wage increase which was higher than that offered to the union to be restraint or coercion under § 8(a)(1). Had the wage increase been equal to or less than the proposal made to the union, it would not have violated § 8(a)(1). *NLRB* v. *Bradley Washfountain Co.*, 192 F. 2d 144 (7 Cir. 1951); see *NLRB* v. *Crompton-Highland Mills*, 337 U. S. 217, 224-25 (1949). But the employer's more generous offer to the employees individually than the one made to their union representatives could only have induced them to abandon the union, which they soon did by decertification proceedings. See *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678, 684

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engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

12. By the acts described above in paragraph 10, *and by each of said acts*, Respondent Employer did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act." [Emphasis supplied.]

The Intermediate Report of the Trial Examiner listed the following among the Conclusions of Law:

"4. By failing to perform its obligation to bargain in good faith with the Union in October 1956, and thereafter, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By unilaterally granting merit increases in October 1956, and in January 1957, by unilaterally changing its sick leave policy on or about March 11, 1957, and by unilaterally granting wage increases in April 1957, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act."

These rulings, affirmed by the Board, clearly distinguish between the § 8(a)(1) and the § 8(a)(5) violations. Conclusion of Law 5 found expressly that the unilateral acts, apart from the Examiner's finding of bad faith, interfered with, restrained, and coerced employees in violation of § 8(a)(1).

(1944). The effect of a substantial unilateral wage increase greater than that offered to the union is to disparage the union and thereby coerce the employees to bargain individually; "such action in itself constitutes an unfair labor practice." *NLRB* v. *National Shoes, Inc.*, 208 F. 2d 688, 692 (2 Cir. 1953).

Whether § 8(a)(1) has been violated depends not on the employer's intent but on whether the act in question would tend to discourage union membership. *NLRB* v. *Gaynor News Co.*, 197 F. 2d 719 (2 Cir. 1953), aff'd 347 U. S. 17 (1954); see *Time-O-Matic, Inc.* v. *NLRB*, 264 F. 2d 96, 99 (7 Cir. 1959). The substantial unilateral wage increase not only tended to have such an effect but was probably instrumental in the employees' ultimate decision to decertify. I would hold it to be a violation of § 8(a)(1).

II.

With respect to the obligations imposed by § 8(a)(5), my brethren would hold that so long as an employer intends in good faith to reach an agreement no violation can be found. I agree that the decisions of the Supreme Court reveal that no *per se* test of good faith should be applied and that an employer's intention should be judged in the light of all the circumstances. However, I believe that more is demanded of an employer by § 8(a)(5) than merely a sincere desire to reach an agreement, and I would therefore hold that certain unilateral acts during the course of collective bargaining violate § 8(a)(5) apart from any finding with respect to good faith. Thus, I would enforce the Board's order insofar as it held that the change in sick leave policy was an unfair labor practice under § 8(a)(5).

Section 8(a)(5) provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees." The

statute defines the duty of collective bargaining in § 8(d):

> "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. * * * "

One duty imposed upon the parties by § 8(d) is that of approaching the bargaining table with a sincere desire to reach an agreement. The ultimate issue for the Board and the courts with respect to this obligation is whether the respondents' acts at the bargaining table were sham and whether it in fact wished to avoid an agreement. *NLRB* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 134 (1 Cir.), *cert. denied* 346 U. S. 887 (1953); see *NLRB* v. *Insurance Agents Int'l Union*, 361 U. S. 477, 504, 514 (1960) [Frankfurter, J., concurring]. The Board here refused to adopt the Trial Examiner's finding that the "Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union," and I believe it was correct in doing so. The evidence in the record shows that the parties had seven meetings between August 20, 1956 and December 5, 1956, at which they discussed many provisions to be incorporated into a collective-bargaining agreement, and the employer's readiness to compromise on several issues belies any contention that it did not wish to conclude an agreement.

But § 8(d) requires more than just a willingness to enter into a contract. It directs not only that the

parties confer in good faith, but that they do so "with respect to wages, hours, and other conditions of employment." The Supreme Court has read this language to establish certain "subjects of mandatory bargaining" which cannot be unilaterally withdrawn from the list of those to be bargained about. *NLRB* v. *Wooster Division of Borg-Warner Corp.*, 356 U. S. 342, 349 (1958). Mere willingness to conclude an agreement with the union does not satisfy the employer's obligation; he must also confer with the union with respect to each and every subject of mandatory bargaining. A refusal to bargain within the meaning of § 8(d) need not be a total refusal. If an employer refuses to consult the union as to any subject with respect to which bargaining is mandatory, he commits an unfair labor practice, no matter how sincere his intent. See, e.g., *NLRB* v. *Niles-Bement-Pond Co.*, 199 F. 2d 713 (2 Cir. 1952) [Christmas bonuses]; *NLRB* v. *Proof Co.*, 242 F. 2d 560 (7 Cir.), *cert. denied* 355 U. S. 831 (1957) [seniority provisions and bulletin board use]. The policy underlying such a rule is that to which Professor Cox alluded in the passage immediately preceding the one set out in the majority opinion:

> "As in the case of refusal to execute a contract with a union, a distinction should be drawn between inquiring into the employer's state of mind in order to distinguish the sham from the real and condemning conduct which thwarts the policy of making terms of employment depend upon mutual consent." Cox, The Duty to Bargain in Good Faith, 71 Harv. L. Rev. 1401, 1424 (1958).

As I read § 8(d), together with the gloss of the *Borg-Warner* case, Congress has decided that with respect to subjects of mandatory bargaining the decision-making process requires consultation with the union. I do not believe it is necessary to read "confer" in § 8(d) as imposing upon the employer the duty of first obtaining

the *consent* of the union; but it requires, at the very least, that he *discuss* any proposed significant change in conditions of employment with the employees' bargaining representatives.

An employer who, during the course of negotiations, unilaterally, and without notifying the union, institutes a change in one of the conditions of employment as to which collective bargaining is mandatory is, in effect, bypassing the employee representatives and negotiating with individual employees directly. See *May Department Stores Co.* v. *NLRB*, 326 U. S. 376, 384 (1945); *Lloyd A. Fry Roofing Co.* v. *NLRB*, 216 F. 2d 273, 276 (9 Cir. 1954). If an employer is permitted to take unilateral action without even consulting the union, he will be able to undermine negotiations with respect to any one of the mandatory subjects of bargaining as effectively as if he altogether refused to bargain over it. Indeed, the failure to notify the union if there has been an opportunity to do so must in all but the most extreme circumstances signify an intent to deny the employees any role in decision-making with respect to the particular condition of employment which is involved. Such conduct may be entirely consistent with a sincere subjective intent to reach an agreement with the union on all other issues, but irrespective of the employer's state of mind it should constitute an unfair labor practice.

In this case the National Labor Relations Board charged the employer with having violated the duty to bargain by taking three steps unilaterally without notifying the union: granting merit increases, changing sick leave policy, and granting wage increases larger than those offered to the union. In my opinion, the record supports the charge only with respect to the change in sick leave regulations.

In a notice posted at its plant on March 11, 1957, the employer announced that the sick leave rules were being changed so as to allow only five sick days per year in place of ten. Accumulation of unused days was

doubled, so that an employee who used no days was no worse off than he had been under the old plan. However, the change, which was made without notice to the union, certainly affected those who were sick during the year. At that time, negotiations had been suspended for several months, but the sick leave plan was still one of the subjects left open for discussion. By changing the rules without giving the union notice of any intention to do so, the employer disregarded the federal policy calling for joint deliberation between the employer and the union before a change is made. I would hold the unilateral step to be a *per se* refusal to bargain with respect to a subject of mandatory bargaining and a violation of § 8(a)(5).

The merit increases, however, were part of the existing wage pattern and were not granted in such a way as to discriminate against union members. Although a change in merit review *procedure* could not be undertaken unilaterally, *NLRB* v. *Century Cement Mfg. Co.*, 208 F. 2d 84 (2 Cir. 1953); *NLRB* v. *Berkley Machine Works & Foundry Co.*, 189 F. 2d 904 (4 Cir. 1951), individual merit reviews are permissible, *White* v. *NLRB*, 255 F. 2d 564, 574 (5 Cir. 1958); *NLRB* v. *Superior Fireproof Door & Sash Co.*, —— F. 2d ——, —— (Slipsheet 1187, 1198 (2 Cir. 1961)).

Nor can it be said that the unilateral general wage increase was a refusal to bargain, although it amounted to restraint or coercion because it was higher than that offered to the union. See *supra*. By the time it was granted, the negotiations had reached an impasse. Having engaged in fruitless discussions for many months and learning that the union was ready to make few, if any, concessions, the employer was justified, insofar as his duty to bargain was concerned, in presuming that a general wage increase could be instituted unilaterally only. *NLRB* v. *Andrew Jergens Co.*, 175 F. 2d 130 (9 Cir. 1949); see *NLRB* v. *Sands Mfg. Co.*, 306 U. S. 332 (1939).

I would, therefore, modify the order of the Board so as to find a § 8(a)(1) violation in that the employer offered a greater wage increase to the individual employees than it did to the union and a § 8(a)(5) violation (and, derivatively, another § 8(a)(1) violation) in that the employer refused to bargain collectively about a change in sick leave policy. I would enforce the order as modified.

Judgment

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the eleventh day of April, one thousand nine hundred and sixty-one.

Present:

HON. J. EDWARD LUMBARD, *Chief Judge*,
HON. STERRY R. WATERMAN,
HON. LEONARD P. MOORE,
Circuit Judges.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

BENNE KATZ, ALFRED FINKEL and MURRY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY, *Respondent*.

Petitions for enforcement from the National Labor Relations Board.

This cause came to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that said enforcement be and it

is hereby denied and that the action be and it hereby is remanded to the National Labor Relations Board for further proceedings consistent with the opinion of this Court.

A. DANIEL FUSARO,
Clerk

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 222

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

against

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION

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Dated: New York, New York,
August 25, 1961.

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In the

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OCTOBER TERM, 1961

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below

The decision of the Court of Appeals is reported in 289 F. (2) 700 (No. 5, July 3, 1961).

Statutes Involved

The relevant portions of the N.L.R.A. and of the Judicial Code are set forth in the Appendix, *infra*, pages 21-22.

Respondents' Grounds of Opposition

1. This Court is without jurisdiction to grant certiorari because of the *non-final nature of the judgment of the Court of Appeals* (App. B, Petition, pp. 42, 43) which denied enforcement of the order of the Board, but remanded the action to the Board ". . . for further proceedings consistent with the opinion of this Court. . . ."

2. There is no direct and irreconcilable conflict between the Court of Appeals and decisions in other circuits on the sole question presented by petitioner (Petition, p. 2).

3. If conflict existed on such question, it had been resolved by this Court in *N.L.R.B.* v. *Insurance Agents International Union*, 361 U. S. 477, decided February 23rd, 1960, prior to the Board's petition for enforcement.

4. The Court of Appeals expressly followed and applied the doctrine of *Insurance Agents Union*.

5. No valid grounds have been shown by petitioner to justify granting certiorari.

ARGUMENT

POINT I

The non-final nature of the judgment of the Court of Appeals precludes granting of certiorari.

1. We assert the absence of jurisdiction in this Court as the first ground of opposition. If it is determined that the judgment here is not a *final* one, the substantive question posed by petitioner (Petition, p. 2) need not be reached or passed on by this Court, and the petition should be denied.

2. If we relied solely on the concluding language of the ordering paragraph following the denial of enforcement (App. B., Petition, p. 43), viz. ". . . and that the action be and it hereby is remanded to the National Labor Relations Board for further proceedings consistent with the opinion of this Court . . .", the *non-final* nature of the judgment could be assumed. But its *non-final, non-determinative* nature is conclusively established by the opinion itself (App. B., Petition, pp. 17-42).

3. The Board found violations, (i), under Sec. 8(a)(5) and (ii), under 8(a)(1) of the Act. Now the remand is the logical and practical implementation of the Court of Appeals' analysis of the Board's finding of an unfair labor practice allegedly committed by the respondents, which, as the Court stated (App. B., Petition, p. 33), ". . . . impliedly proceeds from an erroneous view (of the Board) *that specific unilateral acts, regardless of bad faith, may constitute violations of Sec. 8(a)(5)* . . ." (emphasis supplied). Accordingly, the Court directed that ". . . the case should be remanded to the Board in order that it may have an opportunity *to take additional evidence,* and make such findings as may be warranted by the record" (emphasis supplied) (p. 33).

As to the Board's finding under (ii) above, the Court concluded (p. 34):

> ". . . As discussed previously, the Board found Employer's unilateral acts violative of the two sections but rejected the examiner's finding that Employer did not bargain in good faith. However, the Board's order, set out herein, was directed exclusively to the refusal to bargain. This history leads us to believe that the complaint was based upon an alleged Sec. 8(a)(5) refusal to bargain, *that the alleged Sec. 8(a)(1) violations are derivative only, and that the finding that Sec. 8(a)(1) has been violated must be reviewed in*

the light of the review we have ordered the Board to make with respect to its finding that Sec. 8(a)(5) was violated." (Emphasis supplied)

4. Before proceeding to a review of the legislative history and the evolution of decisional law in this Court (App. B., Petition, pp. 21-32) which led to the rejection of the doctrine of "per se" violations of Sec. 8(a)(5) (refusal to bargain) attributed to specific unilateral acts, *in the absence of the necessary Board finding that the employer failed to act in good faith* (*Insurance Agents International Union*, 361 U. S. 477), the Court first announced its conclusions as follows:

> "We are of the opinion that the unilateral acts here complained of, occurring as they did during the negotiating of a collective bargaining agreement, do not *per se* constitute a refusal to bargain collectively and *per se* are not violative of Sec. 8(a)(5). While the subject is not generally free from doubt, it is our conclusion *that in the posture of this case, a necessary requisite of a Sec. 8(a)(5) violation is a finding that the employer failed to bargain in good faith.* Moreover, we conclude that here the Sec. 8(a)(1) violations the Board has found derived from the acts found to have violated Sec. 8(a)(5), *and that these violations also are unproved, without the necessary finding that the employer failed to act in good faith . . .*" (App. B., Petition, p. 21) (Emphasis supplied)

5. The Court held that in order to sustain its finding of a Sec. 8(a)(5) violation, the Board should be required to show that its determination of failure to bargain in good faith "... must rest ... upon a subjective evaluation of the employer's attitude", and that "This evaluation can only be effectively made in terms of the complete bargaining situation . . ." (p. 22). Indicating the need for additional evidence in this case (in order to avoid relying on

mere inference of failure to bargain in good faith from the fact of a unilateral change and the consequent finding of a Sec. 8(a)(5) violation), the Court stated (p. 30):

> "The evidence must be tested within the framework of the entire bargaining situation. *An opportunity must be given the employer to rebut the inference and finally there must be a definite determination* of the mental attitude of the employer. The language of the Supreme Court indicates that beginning with *Crompton* and concluding with *Insurance Agents' Union*, the above described approach is the correct one . . ."

But the Court properly declined the task of testing for itself the "inference arising from Employer's unilateral acts in a petition for enforcement . . .", and asked itself whether it ". . . must remand to the National Labor Relations Board *for its initial determination of this issue . . .*" (emphasis supplied).

The Court further wrote (p. 31):

> ". . . In all the Supreme Court cases that we have discussed in which the Board's order was enforced there had been a Board finding that the respondent-employer had *failed to bargain in good faith . . .*" and ". . . Here the Board explicitly declined to do so . . ."

The Court concluded (relying on the dispositive determination of this Court in *Insurance Agents Union, supra*, striking down the Board's finding of a *per se* violation, and ruling that the ". . . Board must find the ultimate fact. . . ." of failure to bargain in "good faith"), that (p. 33) ". . . *the case should be remanded to the Board* in order that it may have an *opportunity to take additional evidence* and make such findings as may be warranted by the record . . ."

6. Thus, it is hardly open to debate that the Court of Appeals concluded that it had been *confronted with, indeed,*

had been considering an incompleted case, and felt impelled to remand it to the Board for *additional evidence* along the lines indicated, if the Board wished to justify findings of Sec. 8(a)(5) and Sec. 8(a)(1) violations by respondents.

In these circumstances, the judgment (App. B., Petition, pp. 42, 44) remanding the case, can scarcely be denominated (not to speak of, *treated,* as the Board by implication would seem to be doing here), as a *"final judgment"*, appealable to this Court. It is significant that the Board's petition nowhere adverts to the plainly *interlocutory* nature of the judgment. We find it difficult to understand this silence on the Board's part regarding this elementary feature of the requisites for certiorari.

The Board (Petition, p. 10) asks for review here of an issue which it chooses to characterize as "continually arising", on which it claims there exists a "conflict of circuits." *It asserts in conclusory fashion that the* holding of the Court below, is "contrary to the principles which are implicit in prior decisions of this Court."

Respondents, on the other hand, respectfully suggest that the judgment here is not a "final" one, that the Board's petition is therefore premature, and on this ground alone must be denied.

7. We have, therefore, no choice but to urge the redundant doctrine that only *final judgments* are appealable in this Court, as the necessary doctrine to be applied here, and requiring dismissal of the petition.

8. The Board invokes the jurisdiction of this Court under 28 U.S.C. 1254(1) and 29 U.S.C. 160(e) (Petition, p. 2).

(a) 28 U.S.C. 1254(1) permits review by this Court, in certiorari, of cases in the Courts of Appeals ". . . before or after rendition of judgment or decree."

(b) 29 U.S.C. 160(e) prescribes the procedure and the proceedings in the Court of Appeals relating to a petition of the Board for enforcement of its order. The last paragraph of 160(e) reads, in relevant part: ". . . Upon the filing of the record with it, the jurisdiction of the Court shall be exclusive and its *judgment and decree shall be final,* except that the same shall be subject to review . . . by the Supreme Court of the United States upon writ of certiorari or certification as provided in Section 1254 of Title 28."

(c) Judging from the bare assertion by the Board of jurisdiction in this Court, based on the above two sections, and by the absence (or perhaps, conscious avoidance, in its petition of any recognition of the existence here of any jurisdictional question), we are entitled to conclude that the Board *merely has assumed* that, in fact and in law there is no such question here, i.e., that the judgment challenged by the Board is a "final" one. The Board evidently is of the opinion that this Court would (in the light of the seemingly plain language of these sections) consider its jurisdiction of this case to be undisputed, and, in its deliberations on the Board's petition, pass immediately to a consideration of the merits of the sole question presented by the Board (Petition, p. 2).

(d) The respondent's position, to the contrary, is that there does exist here, a serious question as to whether, *in the present posture of the case now before the Court of Appeals,* and in the light of its opinion and judgment (App. B., Petition, pp. 17-43), this Court does have jurisdiction.

We respectfully urge, in short, that in the light of the unquestioned applicability here of the elementary doctrine of "appealable finality", *the judgment here, is not by any criteria or standards, a "final" one, but is on its face as well as in its judicial and administrative effect, an interlocutory one. Accordingly, this Court may not take jurisdiction, but must deny certiorari.*

To grant certiorari in this case, would be to disregard, without any showing of overriding necessity therefor, one of the most firmly established doctrines of this Court.

(e) "Finality" of the judgment here, we respectfully suggest, is not to be so easily assumed *without more*, merely because (a) The determination of the Court of Appeals (App. B., Petition, p. 42) is captioned "Judgment", or (b) 28 U.S.C. 1254(1) permits review by this Court of a "judgment or decree", and least of all, merely because (c) 29 U.S.C. 160(e) states that "upon filing of the record with it, the jurisdiction of the Court of Appeals shall be exclusive, *and its judgment and decree shall be final*, except that the same . . . etc."

If, in our testing of this preliminary jurisdictional question, we were to rely solely on the language of these sections for guidance in determining the "finality" or "non-finality" of the judgment here, we would not, in the slightest, be helped. Nowhere in these sections is "finality" or "non-finality" described or defined. If, therefore, the doctrine of "appealable finality" is not to be disregarded and is to be given significant application here, we must assume that the types of "judgments" or "decrees" intended by Congress to be appealable here, under the above-noted sections, are solely "final" ones (as they are required to be for State Court judgments, *Burns* v. *State of Ohio*, 360 U. S. 252; unless, as in other situations, the statute *expressly permits* appeals to this Court from *interlocutory* judgments, decrees or orders. As to "the record" to be filed, we are likewise entitled to assume that Congress intended this to be a "final", and "completed" record and not one subject to "further proceedings" on a remand to the Board.

But we look to the *decisional law of this Court* for guidance in determining whether the judgment here, is in practical, as well as judicial and administrative effect, a "final" one.

We shall attempt to demonstrate that, in the light of the applicable case law of this Court, on the point, the conclusion is unavoidable that the judgment here is *interlocutory, non-final,* and *non-appealable,* at this stage of the proceedings.

(f) The Board, under the remand of the Court (its enforcement petition having been denied), is required to take "further proceedings consistent with the opinion of the Court." If the Board determines not to take such "further proceedings", the matter would be presumably closed, and the enforcement denial remain on the docket as representing the final outcome. Respondents submit that the Board *has been premature in its petition here,* and if this Court *denies certiorari,* there will be time enough for the Board to file a later petition for certiorari, if so advised, *only after the supplementary record the Board has made* (following such "further proceedings"), *completes the record* now filed with the Court of Appeals. This, we submit, will terminate all the proceedings and the Board may, *at that time, renew its appeal* to the Court of Appeals on such *completed, final record,* and thereafter await a *final* and *complete* disposition of all the issues by that Court. If the Board's enforcement petition is *finally* and *completely* denied and a *truly final* judgment is entered by the Court, and the Board, *thereafter,* files here its petition for certiorari, it unquestionably would then be properly requesting this Court to review a "final" judgment. No possible objection could then be raised as to that judgment's "appealable finality."

(g) But respondents must strenuously object to the Board's attempt to jump the gun and obtain a review from this Court on the merits of an issue, *before that issue is definitively and finally disposed of by the Court of Appeals.* It can hardly be disputed that, in the present posture of the case, the record presented by the Board to the Court has not been completed. It is entirely possible that,

upon such *completed record*, and a further appeal by the Board to the Court of Appeals, that Court may hold that the Board has *produced enough additional evidence to justify and to grant its enforcement petition.* But respondents must insist that the Board should not be allowed to hurdle or by-pass the normal and elementary requirement (as it is plainly attempting to do by this petition) of presenting a "final judgment" to this Court for review.

9. The judgment here did not dispose of all the issues; indeed, pending further proceedings by the Board, it expressly suspended judgment on the major issue presented. In these circumstances, this Court has held that a decree remanding a cause for further proceedings is manifestly not a "final" decree. *Slaker v. O'Connor*, 278 U. S. 188. Such a decree does not have the finality* and completeness necessary for the purpose of an appeal to this Court. *Martinez* v. *Int'l Banking Corp.*, 220 U. S. 214, 223; *Collins* v. *Miller*, 252 U. S. 364. Viewed as an *order* to remand, the judgment of the Court of Appeals cannot be deemed a "final" judgment. *Richmond & D. R. Co.* v. *Thouron*, 134 U. S. 45. It failed to dispose of all the issues. It is but a step forward towards "further proceedings" by the Board, i.e., final hearings, and a final judgment which will dispose of the entire controversy. Until this is completed, a truly final judgment cannot be entered in this case. Further, we call the Court's attention to the fact that the judgment entered on April 11, 1961 (App. B., Petition, p. 42) is captioned, not "Final Judgment", but merely "Judgment." Concededly, a mere label, without regard to the content and effect of the document, does not deter-

* We shall not burden this Court by engaging in the ancient and interminable controversy over the limits and appropriate contents, for appeals purposes, of the "finality" concept (*Baltimore Contractors* v. *Bodinger*, 348 U. S. 176, 178, n. 4). We submit that the unmistakable *interlocutory* nature of the judgment here makes unnecessary any further discussion of exceptions, qualifications, or refinements of "finality."

mine its true nature. We do contend, however, that it is proper to read into the caption "Judgment", the clarifying designation of "Interlocutory Judgment" (*F.T.C.* v. *Minneapolis Honeywell R. Co.*, 344 U. S. 206, 209).* And nothing is clearer, we submit, than that such a judgment is not appealable to this Court (unless expressly permitted by Statute). If it were, not only labor, but all types of controversies could be brought to this Court *in fragments by successive appeals*, for it is elementary that the right of appeal is postponed until there is a final decree disposing of the whole case. *Rexford* v. *Brunswick Balke Co.*, 228 U. S. 339, and cases cited at page 346.

10. Remand means simply that the case is returned to the administrative body in order that it may take further action *in accordance with the applicable law. Fed. Radio Comm.* v. *Nelson*, 289 U. S. 266. *And in the case here, the applicable law is the doctrine relating to "per se" violations, as pronounced by this Court in Insurance Agents Union, supra.*

Such a remand does not dismiss or terminate the administrative proceedings. If findings are lacking which may properly be made upon the evidence already received, the Court does not require the evidence to be reheard. If further evidence is necessary and available to supply the basis for findings on material points, that evidence may be taken. Whatever findings or order may subsequently be made will be subject to challenge if not adequately supported or the Board has failed to act in accordance with the statutory requirements (*Ford* v. *N.L.R.B.*, 305 U. S. 364).

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* It is difficult to believe that there can be here any such "vagueness" or puzzlement on the part of the Board as to the "finality" (or lack of finality), of the judgment of the Court of Appeals as was inveighed against by Mr. Justice Black (dissenting) in *F.T.C.* v. *Minneapolis-Honeywell R. Co.*, 344 U. S. 206, 217.

11. The Board's petition is wholly silent as to the burden which surely rests upon it to show that it has met the test as laid down by this Court in *Dickinson* v. *Petroleum Conv. Corp.*, 338 U. S. 507, 513, 514, that to justify appealability, it must be established that the decree in question is not "tentative, informal nor incomplete." We submit that the judgment here (while it may lack "informality" by reason of its conventional *format*), plainly is "tentative" and "incomplete"—it leaves open and undecided major issues of fact, and remands it to the Board "for further proceedings consistent with the opinion" of the Court. Indeed, on such remand, as was stated in *U. S.* v. *U. S. Smelting R & M Co.*, 339 U. S. 186, 198, ". . . nothing was finally decided. The whole proceeding thereafter was *in fieri*. The Commission had a right on reconsideration to make a new record. *Ford Motor Co.* v. *N.L.R.B.*, 305 U. S. 364, 374, 375 . . ."

". . . So long as the matter remains open, unfinished and incomplete, there may be no intrusion by appeal . . . Nor does the statute permit appeals even from fully consummated decision, where they are but steps towards final judgment in which they will merge. The purpose is to continue in one review all stages of the proceeding that may effectively be reviewed and corrected if and when final judgment results. . . ." *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546.

Congress has long expressed a policy against piecemeal appeals (*Baltimore Contractors* v. *Bodinger*, 348 U. S. 176, 178), and the purpose of the finality requirement is to "avoid piecemeal disposition of the basic controversy in a single case, 'where the result of review will be to halt in the orderly progress of a cause and consider incidentally a question which has happened to cross the path of such litigation . . .' " *Cobbledick* v. *U. S.*, 309 U. S. 323, 326; *Radio Station WOW* v. *Johnson*, 326 U. S. 120, 123-127; *Stack* v. *Boyle*, 342 U. S. 1, 12. In general, a "judgment"

or decision is final for the purpose of appeal only "when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined." *St. Louis I. M. & S. R. Co.* v. *Southern Express Co.*, 108 U. S. 24, 28. This rule applies in criminal as well as civil cases. *Berman* v. *U. S.*, 302 U. S. 211; *Parr* v. *U. S.*, 351 U. S. 513, 518. The principle against piecemeal appeals implies that the whole of a litigation must be completed before any appeal is allowed. *Collins* v. *Miller*, 252 U. S. 364, 370. And even "exceptions" to the principle against piecemeal appeals have made no inroads on the principle as such, since they have not qualified its core, that is, there should be no premature intermediate appeal. *Sears Roebuck & Co.* v. *Mackey*, 351 U. S. 427, 441.

12. When the Court of Appeals remanded the case to the Board for further proceedings, surely it must be conceded that this was done with a view to requiring the Board to give full effect to its duties in harmony with the views the Court had expressed. *Ford Motor Co.* v. *N.L.R.B.*, *supra*, 374. Indeed, after the remand was made, the Board *was bound to deal with the issue remanded afresh*, thus performing the function delegated to it by Congress. Only in that way could the legislative policies embodied in the N.L.R.B. be effectuated. *N.L.R.B.* v. *Donnelly Co.*, 330 U. S. 219, 227, 228; *S.E.C.* v. *Chenery Corp.*, 332 U. S. 194, 201.

13. The judgment of the Court of Appeals was not "final by any relevant standard" (*Chicago* v. *Atchison, Topeka & Santa Fe R. Co.*, 357 U. S. 77, at p. 83). Indeed, the judgment here is at the opposite pole from the one which this Court held to be "final" (construing 28 U.S.C. 1254(2)), in *Chicago, supra*, at page 83, viz.: ". . . By its decision the Court of Appeals resolved all disputed questions between the parties . . . there was nothing more to litigate; all that remained for the District Court on remand

was to formally enter judgment for the plaintiff. Compare *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379, 381-383, 97 L. Ed. 1094, 1098, 73 S. Ct. 749 . . ."

14. Not only is it erroneous (as the Board seems, by implication, to be doing in filing this petition) to treat or describe the judgment here as "final", but the remand positively *precludes* the entry of "final judgment." The Court of Appeals followed standard procedure which for years has been the pattern for the handling of "interlocutory" decisions (or "judgments"), such as the one here. Merely as illustration, the Second Circuit itself, in *N.L.R.B.* v. *Acme Air Appliance Co.* (2d Cir.), 117 F. (2) 417 (1941), *before entering a final decree* either affirming, modifying or setting aside the Board's order (in a case involving alleged unfair practices under the original Sections of the National Labor Relations Act, 29 U.S.C. Secs. 157 and 158(1) and (8)), remanded the order to the Board "for further proceedings." The Court concluded, on page 423, and wrote: "When the Board shall issue an order *as a result of such proceedings*, such order shall be made a supplemental part of the pending record for our *final action and decree*. *N.L.R.B.* v. *Somerset Shoe Co.* (1 Cir.), 111 F. (2) 681, 690; *Ford Motor Co.* v. *National Labor Relations Board*, 305 U. S. 364, 372, 373, 59 S. Ct. 301, 83 L. Ed. 221. An enforcement order may enter in accordance with the foregoing . . ." (emphasis supplied). (See also, *Fleming* v. *F.C.C.*, 225 F. (2) 523, D. C. Cir. (1955), at p. 526.)

15. The situation here is not the one found in *Int'l Union* v. *Eagle Picher M. & S. Co.*, 335 U. S. 339, at pages 340, 341, where the record had been made and was submitted for action by the Board. Speaking of the right of the Court of Appeals to remand a cause to the Board for the taking of further evidence and for further consideration, this Court went on to state, at page 339: ". . . But it is plain that the scheme of the Act contemplates that

when the record has been made and is finally submitted for action by the Board, the judgment 'shall be final.' It is to have the qualities of any other decree entered in a litigated cause *upon full hearing*, and is submitted subject to review by this Court on certiorari as in other cases. (Sec. 10(e), supra.) . . ." Continuing on page 341, this Court then wrote: ". . . But here the order was definite and complete; it contemplated only arithmetical computation. . . ."

16. As was recently stated by the 9th Circuit in *Resnik* v. *LaPaz Guest Ranch*, 289 F. (2) 814 (9th Cir.) (Apr. 12, 1961), at page 817: ". . . A decision which leaves some matter in controversy open for future consideration before the rights of the parties are conclusively adjudicated is interlocutory and not final . . ." And, as the same Circuit also stated, at page 20, in *N.L.R.B.* v. *Pacific Transport Lines Inc.*, 290 F. (2) 14 (Apr. 3, 1961) (in a case involving alleged violation of Secs. 8(a)(3) and 8(b)(2) of the Act), that while that Court "had accorded the Board's decision the deference it requires and deserves, *yet we are not bound to give it unwarranted finality . . .*" (emphasis supplied).

17. We suggest that to hold the judgment of the Court of Appeals as "final", would likewise be attributing to the Board's order in this case, an "unwarranted finality." Nor should this Court do so, if the rule it laid down in *Arnold* v. *U. S., etc.*, 263 U. S. 427, at page 434, as to the non-appealability of *non-final or non-definitive judgments*, is to be applied here: ". . . It is well settled that a case may not be brought here by writ of error or appeal in fragments; that to be receivable, a judgment or decree must be not only final but complete, that is final not only as to all the parties, but as to the whole subject matter and as to all the cause of action involved; and that if the judgment or decree be not thus final and complete, *the writ of error or appeal must be dismissed for want of jurisdiction* . . . (cases cited) . . ." (emphasis supplied).

POINT II

As to the sole question presented by the Board, the alleged "direct conflict" between the Second Court of Appeals and other Circuits was resolved by this Court in *N.L.R.B.* v. *Insurance Agents International Union*, 361 U. S. 477 (decided February 23, 1960), prior to the Board's filing petition for enforcement.

Even assuming, *arguendo*, that the judgment here is final and appealable, the petition presents no acceptable basis for review by this Court.

1. The Board submits as its first reason for granting the writ (Petition, p. 9) the "recognition" by the Court of Appeals (App. B., Petition, p. 32, n. 10) "that its holding* . . . is in *direct conflict with the decisions* of several other Courts of Appeal" (citing cases) (emphasis supplied).

2. We may observe, in passing, that the Court prefaced its marginal note (p. 32, n. 10) listing these decisions, by the comment "For decisions *disagreeing with the result reached herein* . . ." (emphasis supplied). Thus it is, at the very least, inaccurate for the Board to characterize this language as a "recognition" by the Court that its holding ". . . is in direct conflict with the decisions of several courts of appeal. . . ."

3. We are not favored by the Board's analysis of these other decisions. We are not shown in what specific respects in each of such decisions, such conflict is a real one

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* I.e., that an employer does not violate his bargaining obligation under the Act, where he makes changes in wages and other conditions of employment during negotiations and prior to an impasse without notifying or consulting the employees' bargaining agent, "absent a showing that he was motivated by bad faith."

and does in actual fact exist. Surely a *bare, conclusory assertion* of the existence of such a "direct conflict", furnishes no basis for the grant of certiorari on that ground.

4. We submit that on a careful reading and fair appraisal of the holdings of the other circuits on the principle of the necessity of an *explicit finding* by the Board of lack of good faith of an employer to justify the *ultimate* finding of a violation of Sec. 8(a)(5), it will abundantly appear that the *"disagreements"* of these circuits with "the result" reached by the Second Court of Appeals here, stemmed not from a *"direct" conflict* on this principle but from its application to the varying factual contexts in the records in such other cases, which led to diverse findings of fact relating to the presence (or absence) of good faith on the part of an employer. We submit that a "disagreement with the result" is a far cry from a "direct, square and irreconcilable conflict." The Board's gratuitous equating of the two is hardly a sound basis, without more, for the grant of certiorari.

5. Concededly, this case is not completed. It has been remanded to the Board for "further proceedings." But the Board has failed to show, *that at this stage,* the judgment here, even though not final, is fundamental to the further conduct of the case, and therefore is an appropriate one for review by this Court. There has been no showing that there are unusual factors present justifying certiorari. Nor is the sole question presented by the Board of such importance that it could be fairly urged that its resolution by this Court *at this stage of the proceedings,* will have immediate impact far beyond the particular facts and parties involved. "... 'Special and important reasons' imply a reach for a problem beyond the academic or the episodic . . . " (*Rice* v. *Sioux City Cemetery,* 349 U. S. 70). In these circumstances alone, certiorari should be denied, *U. S.* v. *General Motors Corp.,* 323 U. S. 373, 377;

Land v. *Dollar*, 330 U. S. 731, 734; *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682.

6. But even assuming that the "conflict" between the Second Circuit and the other circuits, as claimed by the Board (Petition, p. 10) did exist, the short answer to this contention is that such "conflict" was definitively resolved by this Court in *N.L.R.B.* v. *Insurance Agents Int'l Union, supra.* It may well be that, as the Board claims, "The issue continually arises" (Petition, p. 10), but in the light of the unequivocal disposition of the sole question here, by this Court in *Insurance Agents Int'l Union, supra* (decided Feb. 23, 1960), it is difficult to understand how at this date, there can be any "conflicts of the circuits."

7. The Court of Appeals made an exhaustive and penetrating exposition of the legislative and decisional history involved in the problem raised by the Board, and, we respectfully submit, correctly concluded (App. B., Petition, p. 30) that the language of this Court, indicates that, ". . . beginning with *Crompton* and concluding with *Insurance Agents' Union*, the above described approach is the correct one . . ."", i.e., " . . . an *inference* of failure to bargain in good faith and consequent finding of a violation of Sec. 8(a)(5), may not be made solely from the fact of unilateral change," and that "the evidence must be tested within the framework of the entire bargaining situatio An opportunity must first be given the employer to rebut the inference and finally there must be a *definite determination of the mental attitude of the employer. . . .*" And as to whether the Court of Appeals or the Board must determine the issue of drawing the inference of absence of good faith from an employer's unilateral acts, the Court further correctly concluded (p. 31), that this Court in *Insurance Agents Union* (per Frankfurter, J., concurring) ". . . disposed of this problem . . ." by holding that ". . . *The Board must find the ultimate fact . . .*" of absence or

presence of good faith. Thus the Court of Appeals had merely to follow and did in fact, *precisely* follow the guidelines laid down by this Court in *Insurance Agents Int'l Union*, which, by the time this case was heard, had definitely resolved any supposed "conflicts" among the circuits on the sole question presented by the Board.

8. It should not be overlooked, moreover, that all of the cases cited by the Board as in "direct conflict" with the holding of the Court of Appeals (Petition, pp. 9, 10) *antedate Insurance Agents Union*, which was decided February 23, 1960. Thus on the sole question here, there was no direct, or any other sort of conflict, when the case reached the Second Court of Appeals on November 15, 1960. That Court (Lumbard, Ch. J., dissenting) in its opinion dated April 11, 1961, after reviewing the record, made an extraordinarily perceptive analysis of the evolution of the position of this Court on the sole question here (App. B., Petition, pp. 21-29). It arrived at the conclusion (p. 21) that "in the posture of this case a necessary requisite of a Section 8(a)5 violation is a finding that the employer failed to bargain in good faith." It then wrote (pp. 29, 30). ". . . *N.L.R.B.* v. *Insurance Agents International Union*, supra, the Courts' most recent word supports our position. . . ."

9. In the light of such authoritative clarification by this Court, *prior* to the time the case at bar reached the Court of Appeals, and the correct application by that Court of the doctrine laid down in *Insurance Agents*, it is difficult to understand how the Board can make any claim that at this time there exists such a real and embarrassing conflict of opinion and authority between the circuit courts of appeal as would justify the grant of certiorari, *N.L.R.B.* v. *Pittsburgh S. S. Co.*, 340 U. S. 498, 502; *Layne & Bowler Corp.* v. *Western Well Works*, 261 U. S. 387, 393; *Dick* v. *N. Y. Life Insurance Co.*, 359 U. S. 437, 449, 450;

Rule 19(1)(b), Revised Rules, Supreme Court of the United States.

10. A final observation is necessary. The petition *omits even mention* of the governing decision here, viz.: *N.L.R.B. v. Insurance Agents International Union, supra.* Presumably the Board believes that decision is so inapposite as not to deserve even the briefest comment—despite the repeated references to and manifest reliance upon it, by the Court of Appeals in its opinion (App. B., Petition, pp. 28, 29, 30, 31, 32). The Board, however, seems satisfied (Petition, p. 106) that "... the holding of the Court below is contrary to the *principles which are implicit in prior decisions of this Court* ..." (citing cases).

It is respondent's respectful suggestion that, to the contrary, *Insurance Agents makes explicit* a doctrine which not only fully supports the holding of the Court of Appeals, but has resolved and sets at rest any seeming "conflicts" of opinion of the Courts of Appeals.

CONCLUSION

For all of the foregoing reasons, the petition should be denied.

Respectfully submitted,

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APPENDIX

N.L.R.A., as amended, 29 U.S.C. 151, *et seq.*:

"Sec. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

. . . . . .

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .

Sec. 10(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively,

wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in Section 2112 of Title 28. . . .

Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinbefore provided, and by the Supreme Court of the United States upon Writ of certiorari of certification as provided in section 1254 of Title 28."

JUDICIAL CODE and JUDICIARY, as amended (28 U. S. 1251, *et seq.*):

"Section 1254(1).

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . ."

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No. 222

In the Supreme Court of the United States

OCTOBER TERM, 1961

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BENNIE KATZ, ALFRED FINKEL, AND MURRAY KATZ, D/B/A WILLIAMSBURG STEEL PRODUCTS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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Statute: Page

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*):

Section 7 ..... 12, 21, 22

Section 8(a)(1) 2, 8, 10, 12, 13, 21, 22, 27, 30, 31, 32, 33

Section 8(a)(5) 2, 8, 9, 11, 13, 18, 20, 21, 22, 30, 31, 33, 35, 36

Section 8(d) 11, 13, 14, 18, 20, 21

Section 9(a) 13, 14, 23

Miscellaneous:

Catlin, *The Labor Problem* (rev. ed. 1935), 624 24

Chamberlain, *The Nature and Steps of Collective Bargaining*, 58 Quarterly Journal of Economics, 359 (1944) 24

Cox, *The Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401 (1958) 20, 24

Cox and Dunlop, *Regulation of Collective Bargaining by the National Labor Relations Board*, 63 Harv. L. Rev. 389 (1950) 36

Leiserson, *The Meaning of Labor Representation*, 90 Annals of the American Academy of Political and Social Science, 22 (1920) 23

Selekman, *Varieties of Labor Relations*, 27 Harv. Bus. Rev. 175 (1949) 24

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 222

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BENNIE KATZ, ALFRED FINKEL, AND MURRAY KATZ, D/B/A WILLIAMSBURG STEEL PRODUCTS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (II. 435–458)[1] is reported at 289 F. 2d 700. The Decision and Order of the National Labor Relations Board are reported at 126 NLRB 288 (I. 13–37).

JURISDICTION

The judgment of the court of appeals was entered on April 11, 1961. The petition for a writ of certiorari was filed on July 10, 1961, and was granted on

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[1] The transcript of record is reprinted in two volumes. The first volume will be referred to as "I," and the second volume as "II."

October 9, 1961 (II. 460), 368 U.S. 811. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 39–41.

QUESTION PRESENTED

Whether it is an unfair labor practice under Section 8(a) (1) and (5) of the National Labor Relations Act for an employer unilaterally to place into effect new wage rates substantially in excess of any offered the bargaining representative chosen by the employees, to change sick leave policy and to grant merit increases so numerous as to constitute a general wage increase, all without prior consultation with the bargaining representative and at a time when the representative is seeking to negotiate upon those subjects.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

On July 5, 1956, the Board certified Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL–CIO, herein called the Union, as collective bargaining representative of all technical employees at respondent Company's plant (I. 20; 6, 45).[1] On the same day, the Board issued certifications to the Union for similar units of employees at five other companies which, along with the

[1] References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

respondent Company, were members of the Hollow Metal Door and Buck Association (I. 20–21; 48).

On July 11, 1956, the Union, by identical letters, requested that the Company and the five other employers make arrangements as quickly as possible "for either individual or Association wide bargaining," and stated that within seven or eight days the Union would submit its proposal for a collective bargaining agreement (I. 21; 52, 261–262). The letters noted that, in accordance with "previous discussions and mutual understanding, the wage rates and/or increases shall be negotiated on an individual Employer basis * * * " (I. 21; 52, 261–262). On July 19, the Union, in a letter to the Company and the other five employers, set forth various subjects for collective bargaining (I. 21; 53, 263–267), mentioning specifically wage rates, merit increase provisions and sick leave policy (I. 264–265). The Union again stated that wage rates and increases were to be negotiated on an individual company basis (I. 21; 53, 266).

When the Company did not reply to these letters, J. L. Raimist, the Union's business manager, put in several phone calls to Sidney D. Raphael, attorney for the Company and the Association. Despite these efforts to arrange an earlier meeting, none was held until August 30, 1956 (I. 21; 53–54). There were ten additional meetings between October 2, 1956, and May 13, 1957,[3] but the parties were unable to reach

[3] In addition to those on August 30 and October 2, 1956, and May 13, 1957, meetings were held on October 18, October 24, November 1, December 5, 1956, and March 29, April 4, April 11, and May 1, 1957 (I. 21).

a final agreement and no further negotiations occurred (I. 21; 58–69, 70–91). On four different occasions during the negotiations and prior to the existence of any impasse, the Company took the following unilateral action with respect to wages or related benefits:

1. *Merit increases.* In its communication to the Company on July 19, 1956, the Union proposed "merit increase provisions" as one of the subjects for collective bargaining (I. 26; 53, 264). Since 1950 the Company had used merit reviews as a basis for granting wage increases to its employees (I. 115, 178, 192). According to Ernst Halpern, the Company's chief draftsman and supervisor of the employees in the bargaining unit (I. 178):

> This system of reviews was in effect since 1950, about, and it used to be about a five-dollar increase every three months, for everybody paid up to sixty-five dollars or so, and five dollars on the average every six months or after, but sometimes management skipped a review for reasons of their own and sometimes they didn't.

Raimist testified that at the first meeting on August 30 it was "definitely established that there would be a joint review on merits," but that the details would be worked out at later meetings (I. 26; 57). Alfred Finkel, the Company partner responsible for labor relations, who participated in all the meetings, testified that the subject was merely mentioned at the meetings on August 30, October 2, and October

10, 1956, with the understanding that negotiations could be conducted at a later date (I. 26; 240, 248, 254). Nevertheless, in October 1956 the Company, without notice to or negotiation with the Union, granted 34 merit increases ranging from $2.50 to $7.50 per week among the 50 employees in the bargaining unit. In January 1957, again without notice to or negotiation with the Union and while bargaining was still going on, 20 members of the bargaining unit were granted merit increases of from $2.00 to $10.00 (I. 26; 98–113, G.C. Ex. 30 (a), (b), (c)). On several occasions Raimist vigorously protested that this action by the Company tended "to destroy the Union" and the "unity of the bargaining unit" (I. 26; 95).

2. *Sick leave policy.* On or about March 11, 1957, while negotiations were still in progress, the Company notified the employees in the bargaining unit of a substantial change in its sick leave policy.[4] The

[4] As of the time negotiations commenced, the Company's sick leave policy allowed employees in the bargaining unit 10 days with pay per year for illness. At the end of the year employees were permitted to accumulate one-half of their unused sick leave up to a maximum of 20 days. Employees who reached the maximum were thereafter paid for one-half of their unused days (I. 278–279). The Company's notice of March 11, 1957, announcing the change in its policy stated (I. 275–276):

> A recent review of our sick leave policy has proved that we have still not achieved our goal of improving attendance. Sick leave is still being abused * * *

change, which cut in half the number of days allowed and increased incentives for good attendance, was retroactive to January 1, 1957 (I. 27; 116–117, 275–276). The Union's letter of July 19, 1956, had listed sick leave as one of the subjects for collective bargaining (I. 264) and it had been discussed at three meetings prior to the Company's March 11, 1957, announcement (I. 27; 57, 62–63, 66). As in the case of the merit increases, the Union was not notified and subsequently filed a vigorous protest (I. 27; 76, 268–269). In its reply, the Company asserted that it did "not feel obligated to explain the matter to you or anyone else since we are not as yet bound to you until an agreement has been reached between us" (I. 27; 76, 270).

3. *Wage rates.* At the meeting on April 4, 1957, the Company offered a three-year contract which would include an immediate $7.50 per week increase for all employees in the bargaining unit plus additional increases of $5.00 at the end of the first and second years of the contract for those employees who were earning less than $90.00 (I. 81–82, II. 369–370). Shortly thereafter, about the middle of April, while negotiations as to this proposal were still going on,

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"Our sick leave policy is changed retroactive to the first of January 1957 in order to increase the benefits for those employees who do not abuse sick leave, and to decrease the benefits for those who do abuse sick leave.

The new policy cut to five the days of sick leave allowed per year and for purposes of accumulation doubled the days remaining unused at the end of the year. The 20-day accumulation limit remained but the Company was to pay for every day unused by employees who had reached the limit rather than only one-half the days as before (I. 275–276).

Ernst Halpern, the Company's supervisor, announced to the employees "that henceforth an automatic wage increase system would be in operation for them as follows: up to $74.99 per week—automatic increase of $5 per week every three months; from $75 to $90 per week—automatic increase of $5 per week every 6 months; over $90 per week—merit increases review every 6 months, raises to be granted in management's discretion on a merit basis" (I. 27; 177). This action was taken without notice to or consultation with the Union (I. 27; 90). The increases were substantially greater than those that the Company had previously offered the Union at the meeting of April 4, 1957 (I. 27; 81).

On May 13, 1957, negotiations between the Company and the Union came to an impasse. Subsequently, during the latter part of July, a meeting of the employees in the bargaining unit was held in the Company's drafting room (I. 24; 121–122). This meeting was conducted during working hours and lasted approximately two hours (I. 24; 146). Halpern was aware of the meeting, and the employees were paid for the time spent in attendance (I. 24; 180–181). Herbert Jacobson, coordinator for the Company and Halpern's aide, acknowledged that the meeting was convened "basically * * * [to] do away with [the Union] as the bargaining agent" because the employees felt they "could do a better job [themselves] than * * * the Union had done" (I. 24; 123–124). At the meeting, which was also attended by Edwin Wisniewski, the Company's chief draftsman, Jacobson read a proposed contract to be pre-

sented to the Company and explained the procedures for resigning from and decertifying the Union (I. 24; 124, 152). By majority vote, the employees decided to present the proposed contract to the Company and to proceed with decertification (I. 24; 124–125). Shortly after this meeting, the Company granted liberal wage increases to nearly every employee in the unit (I. 25; 108–112). These increases exceeded those offered by the Company in its counterproposal of May 8, 1957, the last offer received by the Union before the impasse (I. 25; 81, 87–88, II. 411).

B. THE BOARD'S CONCLUSIONS AND ORDER

Upon the foregoing facts, the Board concluded, as had the trial examiner, that the Company failed to discharge its bargaining obligation and thereby violated Section 8(a) (5) and (1) of the Act when, "without notifying or consulting with the Union," it granted merit increases in October 1956 and January 1957, changed its sick leave policy on or about March 11, 1957, and announced a new automatic wage increase system in April 1957 (I. 13–14, 30–31). The Board found, as had the trial examiner, that the Company "undertook its unilateral actions before negotiations were discontinued in May 1957, or before * * * the existence of any possible impasse" (I. 14, 30).

The Board specifically stated that it was construing "the [examiner's] Intermediate Report as finding violations *only* with respect to the above specified unilateral acts." Noting that the complaint did not allege that the Company "*generally* bargained in bad

faith in the actual negotiations with the Union," the Board "therefore" refused to "adopt the board [sic] statement in the Intermediate Report [I. 31] that '* * * Respondent was merely going through the motions of collective bargaining without a genuine intention of trying to negotiate an agreement with the Union * * *'" (I. 14, n. 4 (emphasis added)).

The Board ordered the Company to cease and desist from (I. 15):

> (a) Unilaterally changing wages, rates of pay, or sick leave, or granting merit increases, or in any similar manner refusing to bargain collectively with [the Union] * * * as the exclusive representative of its employees * * *.
>
> (b) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with the Union as the exclusive representative of its employees * * *.

Affirmatively, the Board ordered the Company to bargain with the Union upon request and to post appropriate notices (I. 14–18).

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals (Lumbard, C. J., dissenting) held that, absent a finding that the employer had bargained in bad faith, the unilateral changes in wages and working conditions, even "occuring as they did during the negotiation of a collective bargaining agreement," did not *per se* constitute "a refusal to bargain collectively" within the meaning of Section 8(a)(5) (II. 439). In the court's view, "once the employer meets the union at the collective bargaining

table" "a necessary requisite of a Section 8(a)(5) violation is a finding that the employer failed to bargain in good faith" (*ibid.*), and "the fact of the unilateral change" does not necessarily require that inference. "An opportunity must first be given the employer to rebut the inference, and finally there must be a definite determination of the mental attitude of the employer" (II. 447). This determination, the court declared, "can only be effectively made in terms of the complete bargaining situation" (II. 440). Since the Board had not found that mental attitude, the court set the order aside.

The court further concluded that the Board's findings of violations of Section 8(a)(1) were not independently based but were "derived from the acts found to have violated § 8(a)(5) and that [those] violations, also [were] unproved without the necessary finding that the employer failed to act in good faith" (II. 439). The court remanded the case to the Board "in order that it may have an opportunity to take additional evidence, and make such findings as may be warranted by the record" (II. 449).

Chief Judge Lumbard dissented because in his view "certain unilateral acts during the course of collective bargaining violate § 8(a)(5) apart from any finding with respect to good faith" (II. 454).[*]

[*] On this reasoning, Chief Judge Lumbard found that, by unilaterally changing sick leave policy during the negotiations, "the employer refused to bargain with respect to a mandatory subject of bargaining in violation of § 8(a)(5)" (II. 451). He would have enforced the "order of the Board insofar as it held the unilateral grant of a wage increase which was higher than that offered to the union to be restraint or coercion under

SUMMARY OF ARGUMENT

A

The terms of Sections 8(a)(5) and 8(d) of the National Labor Relations Act, which define the obligation to bargain collectively, require the employer, upon request, to "meet and confer" with the union concerning each and every subject in the area of "wages, hours, and other terms and conditions of employment." When an employer makes a unilateral change in any of these subjects without full negotiations with the bargaining representative, he fails to "meet and confer" respecting the changes; there is thus a refusal to bargain in the most literal sense of the word. Nor does the employer's willingness thereafter to negotiate about the same general subjects and to execute an agreement eradicate this initial refusal to "meet and confer."

The view of the court below was that the employer's "good faith" is the sole measure of its performance of the obligation imposed by Sections 8(a)(5) and 8(d). This is demonstrably erroneous. The test of "good faith" serves to distinguish employers who are merely going through the outward motions of bargaining from those who are willing to enter into an agree-

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§ 8(a)(1)" (II. 452–453), but did not find the unilateral wage increase to be a violation of the bargaining obligation because "[b]y the time it was granted, the negotiations had reached an impasse" (II. 457). However, he found no violation respecting the merit increases on the ground that they "were part of the existing wage pattern and were not granted in such a way as to discriminate against union members." His view was that although "a change in merit review *procedure* could not be undertaken unilaterally * * * individual merit reviews are permissible * * *" (*ibid.* (emphasis in the original)).

ment with the union if mutually acceptable terms and conditions of employment can be arranged. One does not even reach the question of good faith until it has been shown that the obligation to "meet and confer" has been satisfied.

Unilateral action by an employer before discussion with the union has been completed also violates Section 8(a)(1) of the Act. Such action abridges the employees' Section 7 right to bargain collectively through representatives of their own choosing.

B

The Act absorbs "the philosophy of bargaining as worked out in the labor movement in the United States" (*Order of Railway Telegraphers* v. *Railway Express Agency*, 321 U.S. 342, 346). A basic tenet of this philosophy is that terms and conditions of employment shall be established upon a foundation of mutual consent. Unilateral changes in wages and employment conditions by the employer, before the completion of negotiations on those subjects, rest on fiat rather than on mutual consent. They are thus inconsistent with the philosophy of collective bargaining and violate the policy of the Act.

Unilateral changes while negotiations are pending are also incompatible with the practicalities of collective bargaining. It is difficult to carry on negotiations when the conditions on which they are based are constantly shifting. Unilateral changes reduce the flexibility of collective bargaining by narrowing the range of possible compromises. Similarly, they impair the employees' opportunity to share in the determination of terms and conditions of employment.

Unilateral changes disparage collective bargaining and undermine the union. Such action tells the employees, more loudly than words, either that the union makes no difference or that they can get better terms from the employer without the union. In short, in its effect upon the employees, unilateral action is indistinguishable from negotiations with individual employees and minority groups, contrary to the principle of "majority rule" reflected in Section 9(a) of the Act.

C

The decisions of this and other courts confirm the view that an employer's unilateral action during contract negotiations constitutes an unfair labor practice, irrespective of his subjective good faith. See *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U.S. 217; *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U.S. 678; *May Department Stores* v. *National Labor Relations Board*, 326 U.S. 376.

ARGUMENT

RESPONDENT COMMITTED UNFAIR LABOR PRACTICES BY INCREASING WAGE RATES, CHANGING SICK LEAVE POLICY AND AWARDING MERIT INCREASES WITHOUT DISCUSSING THE CHANGES WITH THE CERTIFIED BARGAINING REPRESENTATIVE

A. THE WORDS OF SECTIONS 8(a) (1) AND (5) AND 8(d) SHOW THAT RESPONDENT'S UNILATERAL ACTIONS WERE UNFAIR LABOR PRACTICES

Section 8(a)(5) of the National Labor Relations Act makes it an unfair labor practice for an employer—

> to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).[6]

Section 8(d) defines collective bargaining to include—

> the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment * * *.

This part of the statutory obligation has three aspects. First, the employer must, upon request, "meet * * * and confer" with the union concerning any subject of collective bargaining presented. Second, in order to differentiate between the sham and the real, the statute requires negotiation "in good faith."[7] Third, the duty extends to each and every statutory subject of collective bargaining. If the employer fails to bargain upon a particular subject it is no defense to show that he has met and bargained as to other subjects, or even that his entire attitude has been one of good faith.[8] Conversely, if either the

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[6] Section 9(a) (discussed *infra*, p. 28) provides that: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *."

[7] See *National Labor Relations Board* v. *American National Insurance Co.*, 343 U.S. 395; *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 134 (C.A. 1), certiorari denied, 346 U.S. 887.

[8] See *National Labor Relations Board* v. *J. H. Allison & Co.*, 165 F. 2d 766, 768–771 (C.A. 6) (merit increase), certiorari denied, 335 U.S. 814; *Inland Steel Co.* v. *National Labor Relations Board*, 170 F. 2d 247 (C.A. 7), certiorari denied, 336 U.S. 960

employer or the union insists upon the inclusion of terms or conditions of employment which are not a proper subject of collective bargaining, there is a violation of the statutory obligation regardless of its *bona fides*. As the Court stated in *National Labor Relations Board* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, in holding that the employer violated the bargaining requirements of the Act by insisting on clauses requiring a vote of the employees before calling a strike and that a union other than the certified union sign the contract (p. 349):

> The company's good faith has met the requirements of the statute as to the subjects of mandatory bargaining. But that good faith does not license the employer to refuse to enter into agreements on the ground that they do not include some proposal which is not a mandatory subject of bargaining * * *.

(pension plan); *National Labor Relations Board* v. *General Motors Corp.*, 179 F. 2d 221, 222 (C.A. 2) (group insurance); *National Labor Relations Board* v. *Niles-Bement-Pond Co.*, 199 F. 2d 713, 714 (C.A. 2) (Christmas bonus); *Richfield Oil Corp.* v. *National Labor Relations Board*, 231 F. 2d 717 (C.A.D.C.), certiorari denied, 351 U.S. 909 (employee stock purchase plan).

*See, also, *American Laundry Machinery Co.* v. *National Labor Relations Board*, 174 F. 2d 124 (C.A. 6), enforcing 76 NLRB 981 (conditioning bargaining on withdrawal of unfair labor practice charges); *National Labor Relations Board* v. *National Maritime Union*, 175 F. 2d 686 (C.A. 2), certiorari denied, 338 U.S. 954 (illegal hiring hall provisions); *National Labor Relations Board* v. *Dalton Telephone Co.*, 187 F. 2d 811, 812–813 (C.A. 5), certiorari denied, 342 U.S. 824 (conditioning execution of contract upon union's consent to be sued in state court); *National Labor Relations Board* v. *Berkley Machine Works & Foundry Co., Inc.*, 189 F. 2d 904 (C.A. 4) (employer's insistence on right to modify unilaterally wage rates of contract); *Douds* v. *International Longshoremen's Associa-*

It follows that an employer who makes a unilateral change in wages or conditions of employment without full negotiations with the bargaining representative fails to bargain collectively about the new term or condition of employment. Certainly, when he acts before discussion, he fails to "meet and confer"; and, if the union is contemporaneously seeking to negotiate upon the subject, there is a refusal to bargain in the most literal sense of the words. The employer's willingness thereafter to negotiate about the same general subject and to execute an agreement provided differences can be worked out does not eradicate the initial refusal to "meet and confer." The unilateral action prejudices the subsequent negotiations (see *infra*, pp. 25–27), and, at the very least, the unilaterally imposed terms remain in effect during the interval. There is, of course, the same duty to bargain about temporary conditions of employment as about those of longer duration.

Thus, in the present case, respondent and the certified representative of its employees were engaged in negotiations about a wide range of subjects including sick leave, wage rates and merit increases. Although the respondent knew that the union wished further discussion, it baldly announced a retroactive change in its sick leave policy cutting the number of days

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tion, 241 F. 2d 278 (C.A. 2) (insistence on bargaining beyond scope of certified unit); *Lion Oil Co.* v. *National Labor Relations Board*, 245 F. 2d 376, 379 (C.A. 8) (conditioning execution of contract on withdrawal of unfair labor practice charges); *Local 164, Painters* v. *National Labor Relations Board*, 293 F. 2d 133 (C.A.D.C.), certiorari denied, 368 U.S. 824 (insistence on performance bond).

of sick leave allowed each year but doubling the number of days which might be accumulated and carried forward from one year to another. Obviously, this new policy fell within the range of subjects on which the respondent knew that the union wished to negotiate. It is equally obvious that the company did not satisfy the obligation to "meet and confer" about the new sick leave regulations. The union was not notified. Respondent's only explanation was that it did "not feel obligated to explain the matter to you or anyone else * * *" (*supra*, p. 6). The company later put into effect the new automatic wage progression without conferring with the union about its proposal. Not only was there a failure to discuss the new system of automatic increases with the bargaining representative but the plan which the company announced unilaterally was substantially more favorable to the employees than the best offer which it had been willing to make the union. Similarly, after the union had specifically requested negotiations with respect to merit increases, the employer, without notice to or consultation with the union, granted 54 such increases among the 50 employees in the bargaining unit (*supra*, pp. 4–5). These increases, granted within the short space of three months while five bargaining meetings were held, and spread among virtually all the employees in the unit, were indistinguishable from a general wage increase." Thus, the company failed—

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[10] With respect to the merit increases, Chief Judge Lumbard would have found no violation on the ground that they "were part of the existing wage pattern and were not granted in such a way as to discriminate against union members" (II. 457). In so concluding, he relied upon *White's Uvalde Mines* v. *Na-*

and knowing the union's desire to negotiate, in effect, "refused"—to bargain collectively about these three conditions of employment. Since all three are appropriate subjects for collective bargaining, respondent's unilateral actions plainly violated Sections 8(a)(5) and 8(d).

We do not suggest that an employer may never make unilateral changes in wages, hours or other

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tional Labor Relations Board, 255 F. 2d 564, 565 (C.A. 5), and *National Labor Relations Board* v. *Superior Fireproof Door & Sash Co.*, 289 F. 2d 713, 720 (C.A. 2). However, in *White's Uvalde Mines*, only five of the 60 members of the bargaining unit were granted merit increases and in *Superior Fireproof*, a total of five employees in two geographically distinct units were accorded such increases. Indeed, in both cases, the courts specifically noted the isolated and personal nature of the increases and took care to distinguish them from such "general increases as were criticized in *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U.S. 217 * * *." *White's Uvalde Mines*, at 565; *Superior Fireproof*, at 720. Assuming *arguendo* the validity of Chief Judge Lumbard's distinction between a unilateral change in merit reviews procedure and an individual merit review (but see *National Labor Relations Board* v. *J. H. Allison*, *supra*), the 54 increases granted here should fall under *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U.S. 217.

Compliance with the bargaining obligation with respect to the award of individual merit increases requires that the employer, once that subject is under discussion, notify the representative of his intention to follow past procedures in awarding merit increases (see *National Labor Relations Board* v. *Bradley Washfountain Co.*, 192 F. 2d 144 (C.A. 7)). This affords the union an opportunity to negotiate with respect to those awards—the procedures, timing, eligible employees, etc. Where no agreement is reached prior to the appointed date for action, the employer might then consider that negotiations on that subject have reached an impasse, and award the merit increases in accordance with his announced intention (see p. 19, *infra*).

terms and conditions of employment. The Act does not freeze existing terms and conditions of employment in the absence of collective agreement; what it requires is conference and discussion plus a *bona fide* effort to agree. If an impasse is reached the employer may unilaterally put into effect new terms and conditions of employment which he has proposed in the bargaining and the union has rejected.[11] During the term of a contract an employer may take unilateral action upon subjects permitted by the agreement.[12] The Act was violated in the present case be-

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[11] See, for example, *National Labor Relations Board* v. *National Paper Co.*, 216 F. 2d 859, 863–865 (C.A. 5); *National Labor Relations Board* v. *Cambria Clay Products*, 215 F. 2d 48, 55–56 (C.A. 6); *National Labor Relations Board* v. *Bradley Washfountain Co.*, 192 F. 2d 144, 150–151 (C.A. 7); cf. *National Labor Relations Board* v. *Andrew Jergens Co.*, 175 F. 2d 130, 136 (C.A. 9), certiorari denied, 338 U.S. 827. See also *J. I. Case Company* v. *National Labor Relations Board*, 321 U.S. 332, 337; *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U.S. 217, 224–225.

In the court below, respondent acknowledged that unilateral changes in employment terms undertaken prior to impasse constitute a violation of the Act's bargaining requirements. It contended, however, that such an impasse had been reached before the unilateral conduct involved herein occurred. Thus, as was stated in its brief below, "Williamsburg rests its defense on the well established doctrine that, generally speaking, the *freedom to grant a unilateral wage increase 'is limited to cases where there has been a bona fide but unsuccessful attempt to reach an agreement with the Union or where this Union bears the guilt for having broken off relations.* In such a situation, the employer has fulfilled his statutory obligation and is free to exercise his power of management.' (*N.L.R.B.* v. *Andrew Jergens Co.*, 175 F. 2d 130, 136 (C.A. 9) * * *" (Respondent's brief, p. 8, emphasis in original.)

[12] *National Labor Relations Board* v. *American National Ins. Co.*, 343 U.S. 395, discussed p. 36, *infra*.

cause the employer, without conferring with the union, made changes which it knew the union desired to negotiate.

The error of the court below apparently stemmed from its belief that the employer's "good faith" is the sole measure of its performance of the obligation imposed by Sections 8(a)(5) and 8(d). Thus the court said that "a necessary requisite of a Section 8(a)(5) violation is a finding that the employer failed to bargain in good faith" and that "there must be a definite determination of the mental attitude of the employer" (II. 434, 447). This reasoning is wholly unsound. The test of good faith, as Chief Judge Lumbard pointed out in the dissenting opinion (II. 455–456), looks to the employer's state of mind in order to distinguish those who are merely going through the outward motions of bargaining from those who accept the union as a genuine participant in fixing terms and conditions of employment, and who are willing to enter into an agreement with the union if mutually acceptable terms and conditions of employment can be arranged. One does not even reach the question of good faith until it has been shown that the obligation "to meet and confer" has been satisfied; and that obligation must be satisfied as to each and every subject of collective bargaining (see *supra*, p. 14).[22] In the present case the new regulation

[22] As was pointed out in the article quoted by Chief Judge Lumbard (II. 455–456):

> * * * a distinction should be drawn between inquiring into the employer's state of mind in order to distinguish the sham from the real and condemning conduct which thwarts the policy of making terms of employment depend upon mutual consent. Cox, *The Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401, 1424 (1958).

relating to sick leave was an appropriate subject for bargaining. So were the new automatic wage progression and the merit increases. There was no bargaining about these subjects; indeed, the proposed changes were not even mentioned to the union. The failure to bargain upon these subjects was a violation of Sections 8(a)(5) and 8(d) of the Act regardless of the employer's state of mind with respect to the rest of the negotiations."[16]

In addition, respondent's unilateral action also violated Section 8(a)(1) of the Act. That provision makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Section 7, in turn, guarantees to employees "the right to self-organization * * * [and]

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[16] Chief Judge Lumbard, who dissented, though acknowledging that the unilateral wage increase greater "than that offered to the union [constituted] restraint or coercion under § 8(a)(1)," concluded that it did not violate Section 8(a)(5) because "by the time it was granted, the negotiations had reached an impasse" (See n. 5 *supra;* II. 452-453, 457). However, the record amply supports the Board's finding that an impasse had not yet been reached. Moreover, if there were an impasse, it could have existed only as to the lesser wage offer which had previously been made to the Union, and not as to the larger increase granted the employees. *National Labor Relations Board* v. *Crompton-Highland Mills*, 339 U.S. 217, holds that, though an employer may put into effect a proposed increase after it had been offered to and rejected by the union, he may not unilaterally institute an increase greater than that offered without being in violation of Section 8(a)(1) and (5). The former action "carr[ies] no disparagement of the collective bargaining proceedings" (*id.* at 224); the latter does because it is an offer as to which the statutory representative has not been afforded its right of first rejection.

to bargain collectively through representatives of their own choosing * * *." The right to bargain collectively through a representative encompasses, as we have shown above, the right to have the representative consulted about changes in wages and other conditions of employment before action is taken thereon. Hence, where an employer makes changes in those subjects unilaterally, he not only violates his bargaining obligation to the representative, but his action at the same time has the effect of abridging the employees' Section 7 right to bargain through representatives of their own choosing (and see *supra*, pp. 27–28).[18]

[18] A majority of the court below avoided finding even a violation of Section 8(a)(1) here on the ground that the Board's finding respecting that provision was not independently based, but merely "derivative" from the finding respecting Section 8(a)(5) (II. 451). But, as Chief Judge Lumbard correctly pointed out in dissent, the "language of both the complaint * * * and the Intermediate Report of the trial examiner reveal that separate § 8(a)(1) violations were alleged and found" (II. 452). Thus, after alleging that the unilateral changes violated Section 8(a)(5), the complaint went on, in paragraph 11, to allege further that, by each unilateral change in employment conditions, the "[e]mployer did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act" (I. 8). Moreover, the trial examiner, who was affirmed by the Board in this respect, expressly found that, by its unilateral acts standing alone, respondent "interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and has thereby engaged * * * in unfair labor practices within the meaning of Section 8(a)(1) of the Act" (I. 34). In these circumstances, it is clear that the Board made an independent, and not merely a derivative, finding of Section 8(a)(1) violations.

B. THE PHILOSOPHY OF COLLECTIVE BARGAINING AND THE POLICY OF THE NATIONAL LABOR RELATIONS ACT SHOW THAT RESPONDENT'S UNILATERAL ACTIONS WERE UNFAIR LABOR PRACTICES

The National Labor Relations Act, like the Railway Labor Act, "generally has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States." *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U.S. 342, 346. Unilateral changes in conditions of employment, made by the employer without prior notification and conferences with the representatives designated by the employees, are as inconsistent with that philosophy as they are contrary to the statute's verbal command.

1. The philosophy of collective bargaining, and therefore the policy of the National Labor Relations Act, is that terms and conditions of employment shall be established upon a foundation of mutual consent. As early as 1920 Dr. Leiserson observed:

> Partnership between labor and capital is coming to mean that the management or the owner of the business must look upon labor as the equal of the management. When we have such a partnership, two equal partners, then one partner cannot do anything without consulting the other partner. That is partnership * * *."[10]

[10] Leiserson, *The Meaning of Labor Representation*, 90 Annals of the American Academy of Political and Social Science, 22, 23 (1920).

Another authority writing while the Wagner Act was under debate described collective bargaining as a system in which:

> The interests and predilections of the workers come to be consulted in making alterations of policy or changes in methods. The government of the business becomes at least a constitutional monarchy, and may approach "industrial democracy." [17]

Others, writing since the Act became effective, have put the point even more emphatically:

> * * * collective bargaining requires negotiations prior to any action by either party. * * * Once joint concern is established, any unilateral action is barred.[18]
>
> * * * The union certified as majority representative of the employees in a bargaining unit now must be accepted as the party of the second part in joint dealings.[19]

In short, the process of collective bargaining is regarded as one by which wages and other conditions of employment are determined through the joint determination of the employer and the representative of the employees,[20] rather than by employer fiat.[21]

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[17] Catlin, *The Labor Problem* (rev. ed. 1935), 424.

[18] Chamberlain, *The Nature and Scope of Collective Bargaining*, 58 Quarterly Journal of Economics, 359, 375, 376–378 (1944).

[19] Selekman, *Varieties of Labor Relations*, 27 Harv. Bus. Rev. 175, 177 (1949).

[20] Cf. Cox, *The Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401, 1408, 1423–1424 (1958).

[21] The latter system, which existed at common law, has been described as one where "the proprietors lay down the rules and the laborers are practically constrained to obey them." *Holden* v. *Hardy*, 169 U.S. 366, 397.

Agreement cannot be compelled by law. If negotiations break down, the employer is free to act unilaterally. But after a majority of the employees have designated representatives for collective bargaining, the statute can, and does, compel the employer to give the regime of joint participation through mutual consent a chance to operate successfully. Unilateral changes in wages and employment conditions by the employer, before negotiations on those subjects have been exhausted, are made by fiat. They deny employees and their representatives the right of joint participation in the formulation of those conditions."[22] Hence, such unilateral action is incompatible with the philosophy of collective bargaining and violates the policy of the Act.

2. Unilateral changes while negotiations are pending are incompatible with the practicalities of collective bargaining. One cannot build a house upon shifting sands. It is an exercise in frustration to discuss at length the merits and shortcomings of an existing sick leave or group insurance program, to consider modifications or alternatives, and then one day to learn that the ground has been pulled from under the discussions by the employer's suddenly instituting his own changes or a new plan which has never been the subject of joint deliberation.

Such changes reduce the flexibility of collective bargining by narrowing the range of possible com-

[22] The same reasoning also holds true where the employer, after reaching an impasse with the union, grants the employees terms more favorable than those previously discussed with the union. See *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U.S. 217, 224–225.

promises. Suppose that the union's initial request was for a 10 cents an hour increase in wage rates, an increase in sick leave from 10 to 15 days per year, and a union security clause. Were the parties to bargain jointly about these subjects, the union, finding that it was encountering employer opposition on the union-security demand, could consider "trading" that off for higher wage or sick leave benefits than originally proposed. On the other hand, were the employer immediately to put into effect a wage increase of the amount requested by the union or greater, without first consulting the union, the parties would have to bargain about the remaining subjects without using wages in the trading. If the employer next liberalized sick leave unilaterally, the parties would be forced to a "yes or no" show-down upon union security. In theory, perhaps, the greater economic benefits might be surrendered for a new union security clause. In practice the *fait accompli* cannot be reversed so easily.

For similar reasons unilateral action narrows and thus impairs the employees' opportunity to share in the determination, not only of the terms or conditions of employment which have been changed unilaterally, but also of other terms or conditions. There is always a limit upon the addition to labor costs which the employer can afford; it may be 10, 15 or 25 cents an hour. The increment might be distributed in a direct wage increase, an insurance or pension program, or vacations or holidays, or some combination. If the employer unilaterally distributes all or part in

one form, the employees lose any meaningful opportunity to bargain for it in another.

3. Unilateral changes disparage collective bargaining and undermine the union. For the employer to make such changes after a majority of the employees has chosen a representative and while the representative is seeking to bargain says to the employees, "See, the union makes no difference; I shall ignore it and establish your conditions of employment as before." Still more disparaging is putting into effect unilaterally wages or conditions of employment more favorable to the employees than any which have been offered through the union. Such action carries the message, "I will grant you, without the union, more favorable terms than any the union can obtain." Manifestly, such a threat or promise, if made expressly, would constitute interference, coercion, and restraint in violation of Section 8(a)(1). Action speaks louder than words.

The present case amply demonstrates the consequences of such misconduct. Respondent showed its scorn for the union by changing the sick leave plan without even giving the union prior notice, despite the fact that this was a subject upon which the employees were trying to negotiate through the union. Respondent disparaged the union still further by establishing a wage rate progression, without union participation, which was more liberal than any which it had offered through the union. Finally, it persisted in giving merit increases to individual employees, without collective bargaining, on so wide a scale

as to constitute a general wage increase. The inevitable result, as found by the trial examiner, was that, when an impasse in negotiations developed, the employees voted to decertify the union because they felt that without the union they "could do a better job than * * * the union had done" (I. 24; 123–124).

In reporting the Wagner bill, the Senate Labor Committee explained that the principle of majority rule established by Section 9(a) excludes methods of establishing terms of employment other than collective bargaining with the majority representative.

> Majority rule carries the clear implication that employers shall not interfere with the practical application of the right of employees to bargain collectively through chosen representatives by bargaining with individuals or minority groups in their own behalf, after representatives have been picked by the majority to represent all. * * *[28]

In its effect upon the employees and in the philosophy of collective bargaining unilateral action is indistinguishable from negotiations with individual employees and minority groups. Accordingly, all three forms of disregard for rights of the collectivity have been uniformly held to be unfair labor practices both in this Court and the courts of appeals.

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[28] S. Rep. No. 573, 74th Cong., 1st Sess., p. 13. See also *J. I. Case Company v. National Labor Relations Board*, 321 U.S. 332, 337–339.

C. THE DECISIONS OF THIS AND OTHER COURTS CONFIRM THE VIEW THAT RESPONDENT'S UNILATERAL ACTIONS DURING THE CONTRACT NEGOTIATIONS WERE UNFAIR LABOR PRACTICES

In *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U.S. 217, an employer and the union representing its employees engaged in extensive negotiation about wage rates and sundry other appropriate subjects of collective bargaining until "something of an impasse" was reached (*id.* at 218). Thereafter the employer unilaterally put into effect a wage increase greater than any offered to the employees through the union. This Court held (*id.* at 223)—

> The employer engaged in an unfair labor practice when, without consulting the employees' collective bargaining representative, it put into effect, for most of its employees who had been represented in the negotiations, a general wage increase in rates of pay which was substantially greater than any that the union had offered.

The present case falls squarely under this proposition. The facts are indistinguishable from those in *Crompton-Highland Mills*. We submit that that precedent is controlling here.

The court below found a significant distinction in the fact that in the earlier case the Board had found that the employer's action showed that "the respondent was not acting in good faith during the negotiations, and is manifestly inconsistent with the principle of collective bargaining," whereas in the present case the Board concluded that the pleadings barred a finding upon the question of good faith. We doubt that

this Court meant to place reliance upon the employer's state of mind in the *Crompton-Highland Mills* case, certainly not in holding that his conduct was an unfair labor practice. The case, as it reached the Court, presented, *inter alia*, these issues: (a) whether the Board properly found that the unilateral wage increase violated Section 8(a) (1) and (5); and (b) whether, as contended by Crompton-Highland, circumstances arising after issuance of the Board's cease and desist order eliminated any need for its enforcement. The Court's opinion deals initially with the first issue. In holding that the employer's action constituted an unfair labor practice, the Court mentioned neither the employer's subjective state of mind nor the Board's finding as to good faith. The opinion relied upon a finding that the action interfered with, restrained and coerced the employees in the exercise of rights guaranteed under the Act (*id.* at 222, 233) and upon the argument that unilateral action of the kind involved was inconsistent with, and disparaged, the bargaining process."[*] It was only when the Court addressed itself to the second issue—whether intervening circumstances disposed of the need for enforcement of the cease and desist order—that the Court quoted the Board's find-

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[*] The Court quoted and italicized as a "significant finding" the examiner's statement (*id.* at 222, App. B):

> ** * * by granting its employees a unilateral wage increase * * * the respondent has * * * failed and refused to bargain with the Union as the exclusive collective bargaining representative of the employees * * *, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under the Act.*

ing as to good faith and only then as part of a broader finding that the unilateral action was "manifestly inconsistent with the principle of collective bargaining" (*id.* at 225). It was this inconsistency—not the employer's state of mind—on which the trial examiner and the Board had focussed attention in passages quoted by the Court.

The *Crompton-Highland Mills* case was decided largely upon the authority of two earlier decisions by this Court both of which rule, without inquiry into the employer's good faith, that unilateral action while negotiations are pending violates Section 8(a) (1) and (5). In *Medo Photo Supply Corp.* v. *National Labor Relations Board,* 321 U.S. 678, the employer, while wage negotiations with the union were pending, was approached by a majority of the employees with an offer to abandon the union if they could obtain certain proposed wage increases themselves. This Court held that the employer had violated Sections 8(a) (1) and (5) of the Act, quite apart from the obvious inducement it offered the employees to leave the union, because the employer disregarded its obligation to arrange terms and conditions of employment only by collective bargaining with the majority representation. The Court stated (pp. 683–685):

> The National Labor Relations Act makes it the duty of the employer to bargain collectively with the chosen representatives of his employees. The obligation being exclusive, see § 9(a) of the Act, * * * it exacts "the negative duty to treat with no other." *N.L.R.B.* v. *Jones & Laughlin Corp.,* 301 U.S. 1, 44 * * *.

> • • • Bargaining carried on by the employer directly with the employees, whether a minority, or majority, who have not revoked their designation of a bargaining agent, would be subversive of the mode of collective bargaining which the statute has ordained • • •. But orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees themselves, prior to such a revocation • • •.

The amount of discussion between the employer and individual employees is immaterial. Unilateral action without prior discussion is equally "subversive of the mode of collective bargaining which the statute has ordained;" it too is an unfair labor practice.

The latter point was settled in *May Department Stores* v. *National Labor Relations Board*, 326 U.S. 376. An employer, in the good faith belief that it was not required to bargain with the union certified by the Board because the unit was inappropriate, undertook to obtain War Labor Board approval for a proposed wage adjustment without consulting the union. The Court held that the employer had violated Section 8(1) because (*id.* at 384–385):

> • • • Employer action to bring about changes in wage scales without consultation and negotiation with the certified representative of its employees cannot, we think, logically or realistically, be distinguished from bargaining with individuals or minorities • • •.
>
> • • • Such unilateral action minimizes the influence of organized bargaining. It interferes with the right of self-organization by emphasizing to the employees that there is no

necessity for a collective bargaining agent. * * *"

The courts of appeals have consistently held that an employer's unilateral action during the course of contract negotiations violates Section 8(a) (5) and (1) without regard to—and even in spite of—a finding as to good faith. The rule has been applied to wage rates,[10] merit increases,[11] and other conditions of em-

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[9] On similar grounds this Court, in *National Labor Relations Board* v. *Wooster Division, Borg-Warner Corp.*, 356 U.S. 342, sustained the Board's finding that the employer violated his bargaining obligation by insisting upon a provision which would have required the union to poll the employees before calling a strike—even though the proposal was made in good faith and the employer wanted to reach an agreement. The Court stated that the limitation sought "substantially modifies the collective-bargaining system provided for in the statute by weakening the independence of the 'representative' chosen by the employees. It enables the employer, in effect, to deal with its employees rather than with their statutory representative. Cf. *Medo Photo Corp.* v. *Labor Board*, 321 U.S. 678" (356 U.S. at 349–350).

[10] *Superior Engraving Co.* v. *National Labor Relations Board*, 183 F. 2d 783, 790 (C.A. 7), certiorari denied, 340 U.S. 930; *National Labor Relations Board* v. *Stilley Plywood Co., Inc.*, 199 F. 2d 319, 320 (C.A. 4), certiorari denied, 344 U.S. 933; *Great Southern Trucking Co.* v. *National Labor Relations Board*, 127 F. 2d 180, 186 (C.A. 4), certiorari denied, 317 U.S. 652; *Carpinteria Lemon Association* v. *National Labor Relations Board*, 240 F. 2d 554, 557 (C.A. 9), certiorari denied, 354 U.S. 909; *National Labor Relations Board* v. *George P. Pilling & Son Co.*, 119 F. 2d 32, 38 (C.A. 3), *National Labor Relations Board* v. *Highland Shoe, Inc.*, 119 F. 2d 218, 222 (C.A. 1); *National Labor Relations Board* v. *Herman Sausage Co., Inc.*, 275 F. 2d 229, 234 (C.A. 5).

[11] *Armstrong Cork Co.* v. *National Labor Relations Boards*, 211 F. 2d 843, 847–848 (C.A. 5); *National Labor Relations Board* v. *Dealers Engine Rebuilders, Inc.* 199 F. 2d 249, 252 (C.A. 8); *National Labor Relations Board* v. *J. H. Allison & Co.*, 165 F. 2d 766 (C.A. 6), certiorari denied, 335 U.S. 814.

ployment.[25] Thus, in *Armstrong Cork Co.* v. *National Labor Relations Board*, 211 F. 2d 843 (C.A. 5), the court held that the granting of merit increases after the union representative had stated "that he wanted no changes made in conditions of employment, without consulting him and without him being a party" (*id.* at 845), was an unfair labor practice. Although there was no finding that the employer acted in bad faith, the court stated (*id.* at 847):

> Good faith compliance with Sections 8(a) (5) and (1) of the Act presupposes that an employer will not alter existing "conditions of employment" without first consulting the exclusive bargaining representative * * *, and granting it an opportunity to negotiate on any proposed changes. See *N.L.R.B.* v. *Crompton-Highland Mills*, * * *. Here, we think petitioner's action in * * * granting merit increases affecting its mechanical employees, without consulting their union as requested, constituted unilateral action which naturally tended to undermine the authority of their certified bargaining representative, and violated the above sections of the Act.

Similarly, in *Lloyd A. Fry Roofing Co.* v. *National*

[25] *Lloyd A. Fry Roofing Co.* v. *National Labor Relations Board*, 216 F. 2d 273, 276 (C.A. 9) (relief periods); *National Labor Relations Board* v. *Niles-Bement-Pond Co.*, 199 F. 2d 713, 714 (C.A. 2) (Christmas bonuses); *National Labor Relations Board* v. *Proof Co.*, 242 F. 2d 560 (C.A. 7), certiorari denied, 355 U.S. 831 (seniority provisions and bulletin board use); *Great Southern Trucking Co.* v. *National Labor Relations Board*, 127 F. 2d 180, 186 (C.A. 4), certiorari denied, 317 U.S. 652 (grant of paid vacation); *National Labor Relations Board* v. *George P. Pilling & Son Co.*, 119 F. 2d 32, 38 (C.A. 3) (offer of shorter hours to employees).

Labor Relations Board, 216 F. 2d 273 (C.A. 9), the court affirmed the trial examiner's finding that the employer had violated Section 8(a)(5) by unilaterally abolishing relief periods while negotiations with the bargaining representative were pending. The court so ruled despite the examiner's finding that the employer had acted in good faith, declaring (*id.* at 276):

> An increase in wages when effected during the course of negotiations without consulting the employees' collective bargaining representative constitutes a refusal to bargain in good faith. *N.L.R.B.* v. *Crompton-Highland Mills,* * * *. Such unilateral action is considered to amount to bargaining with the employees individually rather than through their certified representative and defeats collective bargaining. * * * Such action is comparable to the action taken by the Company in this case which we hold to be an unfair labor practice."

To the same effect see *Aluminum Ore Co.* v. *National Labor Relations Board;* 131 F. 2d 485 (C.A. 7), cited in *Crompton-Highlands Mills, supra,* at 233, where the employer's unilateral wage increase was found unfair despite the Board's finding that he was acting in good faith and had subsequently reached an agreement with the union.

" Subsequent to the decision below, the Ninth Circuit has expressed agreement with the Second Circuit's analysis and conclusion in the present case (but without mentioning the prior decision in *Fry Roofing Co.*, which, we submit, is in direct conflict). *National Labor Relations Board* v. *Cascade Employers Association,* 296 F. 2d 42. This is the only other reported court of appeals decision which reaches the conclusion announced below by the Second Circuit.

The cases cited by the majority below are distinguishable. In *National Labor Relations Board* v. *American National Insurance Co.*, 343 U.S. 395, the Court held that an employer does not violate Section 8(a)(5) by bargaining in good faith for a management prerogatives clause granting him exclusive authority over certain employment conditions during the term of the contract. It is one thing for an employer to bargain with the union for unilateral control over certain subjects; it is quite another thing for the employer to exercise that power without consulting the union. *Cf.* Cox and Dunlop, *Regulations of Collective Bargaining by the National Labor Relations Board*, 63 Harv. L. Rev. 389, 401 ff. (1950). The Court laid stress upon the test of "good faith" as the measure of whether an employer was bargaining for a lawful form of contract or seeking to evade the bargaining process, but, far from indicating that bad faith was always a prerequisite to violation of Section 8(a)(5), the Court cited in footnote 20, p. 407, cases in which good faith was irrelevant.

Nor does *National Labor Relations Board* v. *Insurance Agents' International Union*, 361 U.S. 477, stand for the proposition for which it was cited by the court of appeals—that unilateral acts must be "tested within the framework of the entire bargaining situation" (II. 447) and may be excused upon finding a favorable mental attitude on the part of the employer. There the question was whether the Board could lawfully find that a union had failed to bargain in good faith because it had resorted, during the course of negotiations, to a form of economic pressure which

the Board believed to be disruptive of the bargaining process. Stated in general terms the question was whether the issue of "good faith" requires only an inquiry into the employer's or union's subjective state of mind for the purpose of distinguishing real from sham negotiations, or also presents such broader questions as whether their conduct in dealing with each other is consistent with good bargaining practices. In holding that the test was subjective, at least as applied to those facts, the Court nowhere implied that the legality of a refusal to deal—including its equivalents such as individual bargaining and unilateral action—depends upon the issue of subjective good faith. On the contrary, the opinion specifically recognizes that "an employer's unilateral wage increase during the bargaining processes tends to subvert the union's position as the representative of the employees in matters of this nature, and hence has been condemned as a practice violative of this statutory provision. See *Labor Board* v. *Crompton-Highland Mills*, 337 U.S. 217." 361 U.S. at 485.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the case remanded with directions to enter a decree enforcing the Board's order.[*]

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FEBRUARY 1962.

[*] The fact that the employees had acted in July, following the impasse, to decertify the Union was no bar to the relief ordered (I. 31–32, examiner's Intermediate Report). It is well established that, where the loss of a majority is attributable to unfair labor practices found, the Board is justified in ordering the employer to bargain with the union. *Franks Bros. Company* v. *National Labor Relations Board*, 321 U.S. 702.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> SEC. 8. (a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).
>
> * * * * *
>
> (d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by

either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under

which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representatives, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

against

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

against

BENNE KATZ, ALFRED FINKEL and MURRAY KATZ, d/b/a WILLIAMSBURG STEEL PRODUCTS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

Questions Presented

1. Whether, in the context of a continuing impasse and ultimate breakdown of negotiations, both caused by the union, an employer violates Section 8 (a) (1) and 8 (a) (5) of the National Labor Relations Act by following its long-established standard practices known to and discussed with the union during collective bargaining, of granting merit and automatic wage increases and adjusting sick leave policy.

2. Whether such actions constitute *per se* and *separately*, a "refusal to bargain collectively" in violation of Section 8 (a) (5), and hence, also constitute "interference, restraint or coercion by an employer" in violation of Section

8 (a) (1), where the Board expressly refuses to find that the employer had "failed to bargain in good faith," as required by Section 8 (d).

3. Whether, in order to support a finding of an employer's "failure to bargain in good faith", the Board may conclusively infer such failure solely from the facts of the alleged unilateral actions, or is required to rest such determination upon a subjective evaluation of the employer's attitude, manifested during the entire period of the bargaining process and fairly reflected as an ultimate fact by the totality of bargaining negotiations, in accordance with the criteria laid down by this Court in *N.L.R.B. v. Insurance Agents International Union*, 361 U. S. 477.

Introductory Note

The Board's statement (Brief, pp. 2-8) presents only those excerpts from its Findings and from the Record which describe *in vacuo*, the Respondent's unilateral actions. Large segments of the testimony establishing Respondent's good faith bargaining (manifesting its sincere desire to reach agreement), the preceding circumstances and immediate negotiating background at the time such actions were taken, are omitted. Likewise omitted is the testimony showing the union's obstructions, vacillations, oscillations and bad faith bargaining which brought about the impasse and breakdown of negotiations. No mention is made of the fact that it was the union which broke off negotiations or that the union rejected Respondent's offer to submit the whole dispute to the American Arbitration Association. The Board ignores the whole situation regarding the Aetna "most favored nation", clause.

Such omissions are hardly calculated to show the *total picture*, in whose complete factual framework alone Respondent's alleged unfair labor practices may be judged. A fair and responsible presentation of the activities of

Respondent in connection with its dealings with the union during the period in question, requires, we submit, a full and *unabridged record of the totality of the negotiations*—, viz: *all of the collective bargaining events.* For we stress at the inception, that the central issue here is, whether the Court of Appeals was right in applying the criteria laid down by this Court in *N.L.R.B.* v. *American National Insurance Co.*, 343 U. S. 395 (1952), and more specifically, *N.L.R.B.* v. *Insurance Agents Int. Union*, 361 U. S. 477 (1960), that the presence or absence of "good faith" must be tested and determined within the framework of the entire bargaining situation and not in the light of specific, isolated acts, and that the Board must weigh any inference unfavorable to the Respondent as part of the totality of inferences which may be appropriately drawn from its entire conduct.

The decision here should not revolve around the unilateral actions of the Respondent *per se* and *unexplained.* The Respondent may not be condemned, we submit, on the mere unexamined or unexplained ground that it "took unilateral actions." This proposition constitutes, in fact, the true thrust of the opinion of the Court of Appeals which, we submit, was clearly right in its reading of the legislative and decisional law background of the underlying problem here of fixing the criteria for determining the ultimate fact of "good faith" in collective bargaining, where "unilateral" actions of an employer are in question.

It becomes necessary, therefore, to review the full story of the misbehavior and bad faith bargaining of the union from the inception of negotiations in August 1956 until the breakdown in May 1957. The Board's statement omits or subordinates the salient facts establishing the union's guilt in creating such impasse and producing the breakdown in negotiations. It minimizes or ignores the contrasting facts of the Respondent's patience, forbearance and genuineness of its bargaining in each of the numerous conferences to the very end in May 1957.

More importantly, the Board ignores the effect of *the conceded good faith bargaining of the Respondent as found by the Board itself.* It is our submission that it is within this full and unslanted framework that the correctness of the opinion of the Court of Appeals must be tested.

The Record Summarized

1. It is undisputed that there was a series of genuine impasses and a breakdown of negotiations.

2. These were wholly and solely the fault of the Union. They resulted from its vacillations as to individual or association-wide bargaining and its unlawful insistence that Respondent accept the Aetna Steel contract, containing the "most favored motion" clause, a subject outside the scope of mandatory bargaining. The Union charged Respondent with refusal to bargain on individual company basis, but, *at its own request,* conducted negotiations on *an association-wide* basis.

3. The Union eventually instigated turmoil in Respondent's shop, creating a further barrier to bargaining.

4. Respondent, literally, never "refused to bargain"; literally, never refused to "meet and confer" sincerely on any or all issues; it, literally, never "interfered with, restrained or coerced" the employees in the exercise of their rights under the Act. The record is overwhelmingly to the contrary.

5. The employees repudiated the Union after its vacillations, changes of position and failure to conclude an agreement.

6. The Board expressly refused to find that Respondent did not "bargain in good faith." The Board found only violations with respect to specified unilateral acts.

7. On a fair appraisal of the full story, it was not Respondent, but the Union, which was guilty of bad faith bargaining.

8. In the circumstances, Respondent was legally justified (under applicable decisional law, as well as Board rulings) in granting normal merit increases, modifying (not diminishing) sick leave policy, both in accordance with past practices, and setting up an automatic wage increase system. Indeed, the Union had *demanded the continuance* of all these "prior benefits," eventually precipitating a strike vote.

9. After a lapse of five and a half years (since July 5, 1956 when the Union was certified) enforcement should be denied, unless the Board orders an election to determine whether the Union at present represents a majority.

The Record Fairly Presented

1. Approximately 50 to 60 employees were within the subject unit (II-248).* The Union had been certified on July 5, 1956 *after a consent election* (I-44, 45).

2. Respondent, together with a number of other steel fabricators, has for many years been a member of the Hollow Metal Door & Buck Association, Inc. (I-48).

3. The records of the Board will reveal that in the certification proceedings affecting members of this association, the employers contended that it should take place on an industry-wide and/or association-wide basis.

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* References are to the volume and page number of the Transcript of Record. Volume II contains the Appendix to Respondent's brief, consisting of portions of the testimony before the N.L.R.B. The Board's references are solely from Volume I, consisting of testimony it selected for its own Appendix; Volume II is ignored in the Board's brief.

4. However, the Board sustained the Union in its contention and ordered elections upon Respondent's consent and certifications on a shop-by-shop basis rather than on an industry-wide basis. The employers loyally complied with this ruling. Individual certifications were obtained in the employer-member plants, all on a consent basis.

5. Despite the Union's successful demand for individual negotiations, it reversed its position and submitted a list of demands to all of the employers (G. C. Ex. 9, I-52, 261; G. C. Ex. 10, I-263). This was followed by a joint labor-management meeting consisting of representatives of the Union and a negotiating committee representing various employers for whom certifications had been issued.

6. Thus, at the very outset, the Union commenced its misleading tactics—it began industry-wide negotiation despite its original insistence on individual company negotiation.

7. Note especially that the complaint charged Respondent with a failure to bargain individually, despite the negotiations, which, at the Union's insistence, were commenced on an association rather than on an individual company basis (I-96).

8. On August 30th, 1956, in the joint labor management meeting negotiations began on an industry-wide basis. Many items were reviewed and some understandings arrived at (I-231-244).

9. On October 2, 1956, this was continued with some results in favor of the Union (I-245-250).

10. On October 10th, further negotiations took place and the Union obtained many concessions (I-251-260).

11. On October 18th, classifications or automatic progressions and other subject matter was discussed, par-

ticularly a clause requiring the preservation of "previous benefits" granted employees and this was accepted (I-63-69; II-265-271).

12. On October 24th the meeting lasted until 1 A. M. (II-272).

13. It was obvious that by this time, despite intensive discussion and continual increased demands by the Union (some of which were conceded), that no major progress had been made because of the Union's intransigence.

14. On November 1, 1956, following a heated discussion, a "package proposal" of the employers was rejected by the Union in a most discourteous and obnoxious manner. The Union itself had requested this package proposal. Furthermore, the Union turned down the offer to engage in individual bargaining (II-273-276).

15. Evidently the Union's representatives thereafter had a change of heart for the Union again reversed its position and requested individual bargaining on job classifications. Respondent agreed with the Union to meet on November 14th (II-38). Thereafter a lengthy meeting was held between Halpern, the chief engineer of Respondent and the Union representatives and its shop-committee. Again the Union manifested an inflexible attitude. Finally the Union representative injected intemperate remarks accusing Halpern of "Un-American" methods in handling negotiations. The Union representative had been offered no provocation to justify such outbursts. The meeting terminated without further action (II-38-41; 52-53).

16. On December 5, 1956, at the Union's request, an association-wide management meeting was held at the New York State Mediation Board. Mr. Howard Gamser represented the Board. All employers were represented, as well as employee representatives from the shops and of

the employer-members. Gamser suggested that the Aetna Steel Products agreement, which was then in the process of being negotiated individually, be completed so that its contents could be ascertained. A recess was taken in order to clarify the Union's position regarding its agreement with Aetna Steel (I-74-75; II-279-280).

17. By January 1957 the Union had already caused an impasse, because at this stage the Union began to insist on imposing on the Respondent the form of contract which it had entered into with Aetna without consulting the Respondent or the other employers. The Union had dealt with Aetna on an individual basis. This contract contained "the most favored nations clause," which precluded the negotiation of any collective agreement with any other employer in the Hollow Metal Industry containing terms and conditions different than those embodied in that contract (Respondent's Exhibit 2, I-280). (*It is important to note that in its Brief, the Board ignores the whole situation regarding the Aetna agreement.*) The Union's obstinate insistence on this contract thus created an impassable barrier which was never overcome during the remaining negotiations. The Union persisted in its "take it or leave it position." The Aetna Company would not allow any one of its competitors, principally Respondent, to sign a collective agreement better than that embodied in its own agreement. But the working conditions and general labor pattern in Respondent's plant were entirely different from that in Aetna Steel. Aetna had its production employees in its plant at Pottsville, Pa. and its drafting and listing department in New York City. Respondent had its plant as well as the latter department in Brooklyn. Thus, the Aetna form of contract which the Union attempted to impose on Respondent and the other employers was wholly unsuitable and unrealistic for them. In any event, such contract was wholly outside the scope of mandatory bargaining, and the Union persisted unceasingly in its attempts to impose this contract as a condition to signing

an agreement. On March 16, 1957, Respondent plainly set forth its position on the sick leave plan in a letter to the Union (1-269-271, G.C. Ex. 17).

Negotiations continued on March 29, 1957, at the New York State Mediation Board. Some progress could have been made, but it was blocked by the Union's warning that nothing but the Aetna Steel contract containing the "most favored nations clause," would be considered. There was no indication of any waiver or relinquishment of rights by Aetna under its contract, so that a variation from its terms and conditions could be discussed as a basis for further negotiations with the other employers, including Respondent. Negotiations now continued on an industry-wide basis, with all the employers represented by a shop committee of all the shops in question, with Mr. Gamser of the New York State Mediation Board presiding. But the Union's obduracy on the Aetna Steel contract made further negotiations seem useless (I-77; II-21-26, 30-32, 290-292, 402a, 605a-606a).

18. Nevertheless there was another meeting on April 4, 1957 (again at the State Mediation Board with Mr. Gamser), on an industry-wide basis. *The employers, including Respondent, now improved their offer.* They suggested a three-year agreement and across-the-board increases of $7.50 for the first year, $5.00 for the second year, $5.00 for the third year, automatic progressions up to $90, a seniority formula, etc. In addition, proposals were made by them for holidays, vacations and sick leave. It was pointed out that all this went far beyond what most of the plants required since they were unorganized and had no collective agreements. These additional concessions would have imposed further burdens on the employers. In the face of these substatnial concessions, the Union continued obstinately to demand the Aetna Steel agreement on a "take it or leave it" basis. That meeting was beclouded by a strike threat (II-32-36; 229-230; 370-371; 384-385).

19. In fact, the strike vote was taken in the afternoon and evening of April 4, 1957 immediately after this joint meeting. Plainly this aggravated the impasse and made further negotiations seem futile (II-299-302).

20. All of the employers were notified that a strike vote had been taken. In the meantime there had been an exchange of correspondence between the Union and Respondent in March 1957, relating to claimed modifications of the sick leave benefits which had been in effect for the employees in question. This had been strongly disputed by Respondent (I-268; G.C. Ex. 16 (268); Ex. 17 (269); II-7-12, 282-287; 300-302; 303-304; 399; G.C. Ex. 19 (399); G.C. Ex. 29 (415)).

21. On April 11, 1957, the employers continued on an association basis to negotiate at the New York State Mediation Board. *The employers made further concessions,* but the Union remained inflexible and persisted in demanding the Aetna agreement. The Union by this time had already threatened a strike (II-36). On April 16, 1957, the Union filed a charge with the Board which is the basis of the instant proceeding (I-1). But in this atmosphere of rising tension, negotiations continued even after the filing of these charges.

22. The charge regarding sick leave changes was shown by Respondent to involve a specious issue and was distortedly presented by the Union as "discrimination" against the unit. Sick leave plan and policy had been continuously changed in the past since 1948 (I-117-121). These benefits under the changes of March 1957, were not reduced. In fact they were increased and benefited not only the employees in question but upwards of 300 others not in the unit. The purpose was to discourage continued absenteeism and disruptions of production by modifying the sick leave plan. The plan discouraged malingering and rewarded attendance on the part of employees. This is

common industrial practice and reflects well-established methods to cope with absenteeism. Respondent never intended to take away or reduce any sick leave rights. Nevertheless this issue was exploited by the Union to aggravate the already difficult situation (II-287-289).

23. On April 19, 1957, the Union sent a highly intemperate and vitriolic telegram to Respondent charging "Nazi tactics." Since the telegram became common knowledge, this unquestionably was done in order to embarrass and disparage Respondent in the eyes of its employees. This provocation became a serious issue since the Union refused to apologize. Despite this insulting behavior, the employers reluctantly agreed to continue negotiations (II-54).

24. On May 1, 1957, another meeting at the Board on an industry-wide basis, was held. Once more the Aetna agreement was demanded by the Union. At this meeting the employers put forward their own form of agreement on an industry-wide basis, submitted it to the Union and to the Board, prior to the next meeting on May 13, 1957 (II-304-308; G.C. Ex. 26 (403)).

25. On May 13, 1957, in the face of the mounting tension, strike threats, the inflammatory and violent attitude and unyielding position of the Union, the Mediation Board's representative "was ready to throw up his hands." *Once again the employers improved their money offer* which would have greatly increased their costs in the face of uncertain conditions, but the Union remained adamant and wanted only the Aetna agreement. The Union threatened an immediate strike which in fact followed this meeting at the plant of the Pioneer Fireproof Door Company whose representative had participated in the meetings. In a desperate effort to stave off a strike and to prove their good faith, the employers offered to submit the whole matter of the contents of the collective agreement to the Ameri-

can Arbitration Association (Resp. Ex. 12, I-284). This offer the Union rejected and insisted that arbitration be conducted only by the State Mediation Board. The employers felt, with due respect to the Mediation Board, that it could not render an objective award since it had participated intensively in this dispute by way of mediation. The employers contended that a fairer and more objective forum for such arbitration would be the American Arbitration Association whose facilities, procedures and integrity were unsurpassed. Nevertheless, the Union rejected this offer (I-264-274; G.C. Ex. 28 (272); 280-283; II-306-308-312).

26. On May 17, 1957, the Union by a letter to the employers, including Respondent, again demanded individual bargaining. Respondent answered on May 21, 1957. No reply was ever received by Respondent to its letter, nor was any further attempt made to arbitrate under AAA auspices. The Union failed to give any indication that they intended to pursue individual bargaining demanded in their letter of May 17th. Nothing further was ever heard about the matter. In fact, the Union never wrote asking for resumption of negotiations (I-223; II-310-312).

27. It is important to note that the delay in negotiations between December 5, 1956, and March 29, 1957, was prompted by the suggestion of the State Mediator, in which the Union joined, that they attempt to complete the Aetna agreement and that after such completion, the parties would resume negotiations on an industry-wide basis. The fact is that (although it could not be known to the employers), by this delay and by the insertion of the "most favored nation clause" in the Aetna agreement, the Union was providing itself with a basis to obstruct further negotiations by obstinate insistence on this clause (I-74-75, 94).

28. It is significant that in connection with the Union's alleged objections to unilateral wage revisions and merit

increases, the testimony appears very general, with no letters being written or notes or memoranda on that subject being taken by the Union, as was the custom. This absence of record-making and correspondence was inconsistent with the general pattern of the Union's activities in constantly writing letters, memoranda and minutes (I-82-86).

29. Respondent showed that it had been in the steel fabricating business in a substantial plant for many years, had a history of dealing with many unions, local and international (II-247-249).

29(a). The Board in its Brief (pp. 4-5) misrepresents the circumstances under which "joint reviews on the merits" were to be held and merit increases given. No agreement was ever reached on merit reviews (I-245) but merit increases had to be continued—these could not be stopped because they had long been built into the wage structure.

30. Respondent had a long-standing pattern of job classification, merit reviews, upgrading promotions, periodical across-the-board increases, and sick leave provisions. Merit reviews were *true* merit reviews and had been made since 1950. Some employees were given more than others. Some were given no increases. The work pattern of each employee was carefully considered before granting them. These could also have been re-classifications or promotions. As to pensions, it was shown that this matter had been discussed with the employees in the Union in question for many years prior to the advent of this Union, Local 66, and not only for this group of employees, but for all 300 white collar personnel. These merit increases were made at the usual time, the middle of April. But by this time there had long been an impasse in the negotiations and the August 1957 increases came long after the impasse (1-100-102; 103-105; 107-108; 113-115; 160-166; 177, 178, 179; 187-189; 190, 191, 192) (II 82; 108-109; 226-227; 238; 240-243; 246-255).

31. During the certification period between July 1956 up through July 1957, there had been constant stoppages, meetings, caucuses during working hours, disturbances and tensions—precipitated directly by the chaos and confusion brought on by the antics of the Union during this period. As a consequence, many scheduled and irreplaceable employees were lost within the bargaining unit, further aggravating the disorder in Respondent's operation (I-180-181; 190; II-62-63; 78; 111-112; 113-118; Resp. Ex. 7 & 8; 225; 233-234; 432-433).

32. Respondent made an offer of proof to show that such a campaign of slowdowns and work stoppages had been inspired by the Union's representatives. This offer, in our view, was improperly rejected by the Trial Examiner. Such testimony would have unquestionably substantiated the affirmative defenses asserted by Respondent, that these resulted from the Union's disruptive conduct and deliberate attempt to prevent the signing of any collective agreement except on such terms as it wished to impose (II-149-152; 228-230; 234-235).

33. The employees as well as members of the Union completely changed their position and attitude towards it. This was demonstrated when they were called as witnesses on behalf of General Counsel for the Board. These employees explained the reasons for the alienation of their feelings towards the Union and why they believed it could no longer be claimed to represent them as a collective bargaining agent. A former staunch adherent of this Union, who later became president of the employees' association, testified that by July 1957 the employees wanted no part of Local 66. In fact they were determined under their own auspices to petition the Board for a new election to determine the bargaining representative. All of these witnesses had given statements to some persons in the Board. These statements they seriously disputed. This would seem to indicate that these statements did not

truly reflect all of the transcript given to the Examiner. They appeared to be incomplete and inaccurate portrayals of their position. These statements were introduced over strenuous objections of Respondent on the ground that they were used to impeach the credibility of witnesses who had been called by General Counsel as his own witnesses. In these circumstances the probative value of these statements must be considered as *nil*. It should be specially noted that the Union throughout the negotiations demanded a "prior benefits clause." This clearly indicated that the Union itself was demanding that the historical pattern of wages, classifications, promotions, merit reviews, etc. be continued. Respondent would have been on the horns of a dilemma if it had dared to deny such benefits (I-121-144; 147-150; 151-159; 159-173; 194-202; II-112-118; 120; 138-159; 166-184; 216-240).

34. Much of the testimony admitted by the Trial Examiner related to events after July 1957, which was subsequent to the end of the certification year of the Union (II-72-80). The Trial Examiner made a great point about a meeting of Halpern and Jacobson with the employees during July 1957, relating to pensions, a subject which had been discussed long before the Union came on the scene and the question decertifying the Union (I-23). The employees were not paid for this meeting (I-145-150; 151-173; 181) and it was held after hours (II-160). They were dissatisfied about the payment of strike assessments (II-60-62) and lack of union action (II-78-79). Employees were interviewed by Board officials on company time (II-60-62) and lack of Union action (II-78-79). Employees of the Union and part of the unit in question had severed their ties, with the Union, of their own volition. These employees had petitioned the Board for the right to act as the bargaining representative for the unit of employees in question in dealing with Respondent. (See *Stoner Rubber Company, Inc. and Local 629 International Chemical Workers Union*, 123 N.L.R.B. No. 152).

Summary of Argument

1. Unilateral actions of an employer may not be condemned as violations of Sections 8 (a) (1) and 8 (a) (5) without an examination of all the circumstances comprising the totality of bargaining activity during the whole period of negotiations, in the setting in which these actions were taken. Such actions may not be plucked from the context of the whole story of the bargaining and negotiations and arbitrarily treated by the Board as isolated phenomena, to be branded illegal *per se*, thus depriving an employer of his right of explanation and justification of such actions.

2. Where, as here, the record establishes that the Union caused an impasse and a breakdown of negotiations (despite protracted but unsuccessful "meetings and conferences" at which sincere efforts were made by the employer to reach agreement), specific unilateral actions by themselves, do not make an employer guilty of "refusal to bargain" in violation of Section 8 (a) (5), unless the Board expressly finds in addition that the employer failed to bargain in "good faith," as required by Section 8 (d).

3. Such a finding of the ultimate fact of "good faith" (or bad faith) of an employer rests upon a subjective evaluation by the Board of an employer's mental attitude which can only be effectively determined in the light of and within the framework of the complete bargaining situation.

4. The Court of Appeals was therefore clearly right when it remanded the case to the Board for additional evidence and held that the Board may not, without more, conclusively determine and draw the inference, from the isolated fact of a unilateral change, of a failure to bargain in "good faith," and a consequent violation of Section 8 (a) (5), unless the employer is first given an opportunity

to rebut such inference by submitting evidence of his state of mind during the negotiations and to lay the basis for a finding that he was (or was not) legally justified in taking such action.

5. Both the Congressional history of the enactment of the "good faith" test of collective bargaining set out in Section 8 (d) as well as the decisions of this Court, particularly *N.L.R.B.* v. *Insurance Agents International Union*, 361 U. S. 477 (1960), support the rejection by the Court of Appeals of the *per se* principle urged by the Board.

6. In the light of the Board's express refusal to find that Respondent failed to bargain in good faith, *Insurance Agents International Union, supra*, is the controlling precedent here. *Medo*, 321 U. S. 678 (1944), and *May Department Stores*, 326 U. S. 376 (1945), were both decided before the enactment in 1947, of Section 8 (d) (the "good faith" test); also their facts are patently dissimilar from the situation in this case. Since in *Crompton-Highland Mills*, 337 U. S. 217 (1949), (the Board's chief reliance) the Board *had expressly found* that the employer had failed to bargain in good faith, that case is manifestly inapplicable here. The requirement of proof of "good faith" by a determination of the state of mind of an employer is founded on the salutary policy of the need to restrain the Board's power to control arbitrarily the setting of the terms of collective bargaining. *N.L.R.B.* v. *American Nat. Ins. Co.*, 343 U. S. 395 (1952).

7. Violations of Section 8 (a) (1) (interference) and Section 8 (a) (5) (refusal to bargain) are not two, conceptually distinct and severable infringements of the Act. Therefore, a Section 8 (a) (1) violation may not be found independently of a Section 8 (a) (5) violation.

8. The necessary concomitant and condition precedent for a finding of violations of both Sections 8 (a) (1) and

8 (a) (5) as well as the ultimate, all-encompassing and sole criterion by which to determine an employer's violation of both sections, is a finding that he has not complied with his obligation to bargain collectively in "good faith" (Section (8) (d)).

9. The inordinate delay of five years and eight months (since July 1956) in canvassing the present wishes of the employees requires denial of enforcement, unless the Board orders an election to ascertain whether the Union is presently their choice.

POINT I

The Court of Appeals was right in refusing to apply the discredited "per se" principle to a specific violation of Section 8 (a) (5) of the Act and, derivatively, of Section 8 (a) (1), without an express finding of the Board that Respondents failed to act in good faith. Its decision to remand for further evidence, as a basis for a subjective evaluation of the Respondents' attitude in terms of the complete bargaining situation, to support a finding of good faith, is consistent with the legislative history of the "good faith" test in Section 8 (d) and the controlling doctrine on that subject, as set forth in *Insurance Agents International Union*, 361 U. S. 477 (1960).

The Board urges upon this Court that the "good faith" requirement of Section 8 (d) should play little part or be subordinated (if not wholly discarded) as the ultimate or overriding criterion for determining whether any Section 8 (a) (1) and 8 (a) (5) violations have occurred. It repeats its adherence to and insistence upon the "per se" principle as the sole and exclusive measure of Section 8 (a) (1) and Section 8 (a) (5) violations (Brief, pp. 13,

20, 31, 33, 36, 37). It is our submission that the Board's approach once again "* * * must be *taken as proceeding from an erroneous view of collective bargaining.*"*

In practice, the Board has frequently found "failure to bargain in good faith" merely as a consequence, i.e., as *a conclusion of law,* following *findings of fact* relating to Sections 8 (a) (1) and 8 (a) (5) violations.** It resists the requirement now placed upon it by the Court of Appeals that such finding of "failure to bargain in good faith" *must be truly one of fact,* based on substantial evidence as to the state of mind of the party charged with the violations, and not an incidental consequence in the form of an unsupported conclusion of law, devoid of evidentiary content, and added to its decision and order merely to satisfy the definition of collective bargaining set out in Section 8 (d).

We believe that the Court of Appeals was right in laying down that the finding of "good faith" must be a positive (not a passive or formal component) of a decision and order of the Board. Indeed, as we read the decision of the Court of Appeals, it must be a condition precedent and concomitant to a determination that Sections 8 (a) (1) and 8 (a) (5) violations have occurred. To require the Board to make a determination of subjective state of mind, will protect both employer and Union from arbitrary action by the Board.

On the other hand, to sustain the Board's view, would be to sanction its intrusion into the substantive aspects of the bargaining process in violation of the basic national

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* This was Mr. Justice Brennan's criticism of the Board's approach in *N.L.R.B.* v. *Insurance Agents, supra.*

** *N.L.R.B.* v. *Katz,* 289 F. (2) 700, 709.

policy that the Board avoid exercising any influence upon the terms on which the parties contract.*

In any event, the Board's urging this Court to validate a revival of the "per se" principle, is not only directly contrary to the doctrinal trend of this Court away from "per se" conceptualization,** but is opposed, as well, to its own recent policy declarations and decisions, renouncing the "per se" approach. We find the attitude of the Board in the case at bar hard to reconcile with the statements that Member Brown made in a recent address.***

Adverting to this Court's setting aside the Board's *Mountain-Pacific and Brown-Olds* doctrine on April 17, 1961, Mr. Brown stated at page 10:

> ". . . Under these Supreme Court interpretations, hiring hall arrangements *were no longer illegal 'per se.'* Evidence of discrimination rather than an automatic presumption was necessary to find an unfair labor practice. Furthermore, even assuming the existence of an unlawful closed shop arrangement, em-

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* *Insurance Agents, supra*, pp. 488, 489, 497, 498, 499. As the Court of Appeals stated, 289 Fed. 2nd 700, at p. 707: "* * * If the N.L.R.B. were given the power to involve itself with the myriad specific acts that make up a labor management negotiation, we would no longer have employer-employee negotiation but enforced governmental arbitration * * *." See also Cox, *"The Duty to Bargain in Good Faith,"* 71 Harvard Law Review, 1401, p. 1440 (1958), where the opinion is expressed that "* * * surely a quasi-judicial agency ought not to engage in an effort to readjust the balance (in collective bargaining) *under the guise of statutory interpretation* * * *." (Emphasis supplied)

** In *N. L. R. B.* v. *News Syndicate Co. Inc., et al.*, 365 U. S. 695 (Apr. 1961), this Court agreed with the Second Court of Appeals (279 F. (2) 323), that a "General Laws" provision of a contract was not "per se" unlawful.

*** *"The N.L.R.B. on the New Frontiers"*—Address by Gerald A. Brown, Member, National Labor Relations Board at Institute on Labor Law, Duke University Law School, Durham, North Carolina; February 9, 1962; pp. 10, 12, 13, 14, 15.

ployee union members were no longer *automatically* entitled to reimbursement of union dues and initiation fees. Evidence that union membership was influenced in violation of the Act was now an indispensable element.

"In a word, the bubble had finally burst and with it these so-called 'per se' rules floated to their timely demise.

"I attach particular significance to the Supreme Court's *aforementioned tacit indictments of these 'per se' rules*, perhaps as much because they coincided with my appointment to the NLRB as because they echo my emphatic belief that *independent analysis on a case-by-case basis must be substituted for mechanical rules.*

"Other Federal Courts have likewise had occasion to criticize the creation and application of rigid rules. "The Fourth Circuit, in *N.L.R.B.* v. *Pittsburgh Plate Glass Co.* stressed the need *for modifying the 'per se' approach* to unit problems and then went on to say that Section 9 (b) (2) '. . . *frees the Board from the denomination of its past decisions and directs it to reexamine each case on its merits* and leaves it free to select that unit which it deems best suited to accomplish the statutory purpose."

At page 12:

". . . Indeed, when viewed as a whole, in my opinion, the *Board's most recent decisions depict a definite*

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* When a Union directed employees to refuse to work overtime and to engage in intermittent work stoppages during bargaining negotiations in order to force the company to agree to a contract, the Board reversed its trial examiner because of the *Insurance Agents* case and held that such tactics were not *in and of themselves* a violation of Section 8 (b) (3). Local 220 I.U.E., 127 N.L.R.B. 1514 (1960).

movement away from the rubber stamp approval of 'per se' rules. This trend has manifested itself in an impressive variety of representation and unfair labor practice cases. Among the most significant contributions to modification of the 'per se' approach in representation cases is the *Sheffield Corporation* case. . . ."

At page 13:

"The case-by-case approach also was adopted in the recent American Cyanamid decision. After reconsidering the question of whether a separate unit of maintenance department employees was appropriate in situations where another union sought an over-all industrial unit of the production and maintenance employees, *the Board demonstrated once again its determination to avoid 'per se' rules* by specifically concluding that the mere absence of a bargaining history in a production and maintenance unit would not, *ipso facto,* establish the appropriateness of a maintenance unit.

"Many fixed rules with respect to allegedly objectionable preelection conduct have fared no better. *Their disappearance marks another step forward in the Board's assault on 'per se' thinking.*"

At page 14:

"Summing up this trend in general terms, I would say that the *present Board has freed itself from the self-inflicted dedication to 'per se' rules* which had effectively, though perhaps unwittingly tied the hands of the predecessor Board. It is hoped that this resurrected freedom to act on the merits of individual cases will enhance responsible decision making and better enable the Board to serve the public interest which the Act has intended to promote. . . ." (Emphasis supplied)

While publicly repudiating "per se" thinking, the Board continues to base its position here on a regressive and unrealistic view of collective bargining.*

Respondent submits that in the light of the doctrine of the "totality of negotiations," as set forth in *Insurance Agents International Union, supra,* by this Court, the "per se" principle of determining violations of the Act no longer has current vitality. As indicated in that case, for the purposes of legal analysis and of determining alleged violations of the Act and the interpretation and application of Sections 8 (a) (1) and 8 (a) (5), collective bargaining must be viewed as a *unitary,* not as a *fragmented,* process. The Board's exposition of the "philosophy of collective bargaining, of the Act and of decisions of this and other Courts" (Brief, pp. 23; 28; 39; 37) is a misreading and distortion of the realities of present-day industrial relations and of the evolution of the collective bargaining process since 1935.

Collective bargaining, realistically (until an impasse ends the process), is an unbroken, interrelated, intermeshing *continuum* of conduct and activity by management and the union, *vis-a-vis* each other.**

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* Students of collective bargaining have concluded that the future of this basic process depends on maximum flexibility in adjusting to changing times and conditions and that wide latitude should be preserved in good faith negotiations without government interference; R. W. Fleming, *"The obligation to bargain in good faith",* 47 Virginia Law Review, 988-1013 (1961).

** Indeed this was the earlier view of the Board when it stated that the essence of the bargaining process was "* * * interchange of ideas, communications of facts, peculiarly within the knowledge of either party, personal persuasion *and the opportunity to modify demands in accordance with the total situation,* thus revealed at the conference. * * *" (*S. L. Allen and Co.,* 1 N.L.R.B. 714, 728 (1936).) The difficulty and undesirability of isolating any single action which the Board has disapproved, and designating it alone as sufficient to support a finding of a refusal to bargain, without con-

(Footnote continued on following page)

We submit that for the purposes of the Act, collective bargaining must be treated as a *single history made up of many events and episodes.* Neither a single action or a partial, selected group of actions should be seized upon by the Board as conclusively characterizing, legally, the conduct of one of the parties. "Good faith" cannot be fairly and realistically tested or inferred by isolated occurrences of behavior any more than an individual's "character" can be fairly stigmatized in terms of one or a few isolated instances of certain kinds of behavior. The "per se" principle permits the Board (without warrant in the controlling decisional law) to disentangle, excise, and single out from the whole complex of interrelationships constituting the collective bargaining process, a single action (or a selected cluster) occurring at some point during the negotiations between the parties, treat it in isolation, and if deemed by the Board "unfair," bring it within an easy condemnation of Sections 8 (a) (1) and 8 (a) (5). "Unilateral action" is no less an abstraction than is "economic pressure"* and "vital differences in conduct" during

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(Footnote continued from preceding page)

sidering the background of other unfair labor practices, was pointed out as long ago as 1940 by Chester Ward in *"The Mechanics of Collective Bargaining,"* 53 Harvard Law Review, 754, 754 (1940); see also R. A. Smith, *"The evolution of the 'duty to bargain' concept in American Law,"* 39 Michigan Law Review, 1064, 1107, 1108 (1941). The unity and continuity of collective bargaining has always been recognized as the distinctive feature of this dynamic process for solving plant problems. Schulman & Chamberlain, *"Cases on Labor Relations,"* p. 3 (1949); H. W. Davey, *"Contemporary Collective Bargaining,"* pp. 6, 10 (1951). John H. Fleming, Member N.L.R.B., in *"The Changing Pattern of Issues in Labor Relations Cases Before the Board"*, 29 George Washington Law Review, 273 (December 1960) at page 279, stated:

> "* * * Practical labor-management relations people recognize that bargaining is a day to day affair which carries right into the administration of an agreement, and like women's work, is never done * * *".

* *Insurance Agents, supra,* p. 505.

negotiations should not be permitted to become ". . . observed, under cover of a single abstract phrase . . ."*

It is this fragmented and abstract approach to the problem of ascertaining whether unilateral actions constitute violations of the Act, which the Court of Appeals rejected.

That the "per se" approach is no longer valid is made unmistakably clear in the decision of this Court in *N.L.R.B.* v. *Insurance Agents' International Union, supra.* In that case, the Union was charged with engaging in certain concerted activities designed to harass the employer. The Court held that the Union was not barred in engaging in such economic pressures on the employer. While a Section 8 (b) (3) unfair labor practice charge against the Union was there in question, the principles laid down by the Court should apply by analogy to a case involving charges against an employer under Sections 8 (a) (1) and 8 (a) (5). At page 508, Mr. Justice Frankfurter had the following to say about the "per se" doctrine:**

> ". . . The Board's function in the enforcement of the duty to bargain does not end when it has properly

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*The Board here considers Sections 8 (a) (1) and 8 (a) (5) (as it did Section 8 (b) (3) in *Insurance Agents, supra*), in the words of Mr. Justice Frankfurter in that case, at p. 510: ". . . in isolation, as if each was an independent provision of law and not a part of a reticulated legislative scheme, with interlacing purposes. It is the purposes to be drawn from the statute in its entirety, with due regard to all its interrelated provisions in relation to which Section 8 (b) (3) is to be applied. Cf. *Textile Workers Union* v. *Lincoln Mills,* 353 U. S. 448, 456 . . ." (Emphasis supplied).

Respondent submits that this pronouncement should apply with equal force to the employer sections of the Act, Sections 8 (a) (1) and 8 (a) (5).

**The Board, on the last pages of its Brief (pp. 36, 37), almost as an afterthought, attempts to minimize the controlling significance of this decision. We are compelled to quote at length the language of the concurring opinion as the best refutation of the Board's contention that the decision does not stand for the proposition for which the Court of Appeals cited it, viz: that unilateral acts must be "tested within the framework of the entire bargaining situation" (289 F. (2) 700, 707).

drawn an inference unfavorable to the respondent from particular conduct.** It must weigh that inference as part of the totality of inferences which may appropriately be drawn from the entire conduct of the respondent, particularly its conduct at the bargaining table. The state of mind with which the party charged with a refusal to bargain entered into and participated in the bargaining process is the ultimate issue upon which alone the Board must act in each case, and on the sufficiency of the whole record to justify its decision the courts must pass. *NLRB* v. *American Nat. Ins. Co.*, 343 U. S. 395, 96 L. ed. 1027, 72 S. Ct. 824.

"The Board urges that this Court has approved its enforcement of Section 8 (b) (3) by the outlawry of conduct per se and without regard to ascertainment of a state of mind. It relies upon four cases: *H. J. Heinz Co.* v. *NLRB*, 311 U. S. 514, 85 L. ed. 309; 61 S. Ct. 320; *NLRB* v. *Crompton-Highland Mills*, 337 U. S. 217, 93 L. ed. 1320, 69 S. Ct. 960; *NLRB* v. *F. W. Woolworth Co.*, 352 U. S. 938, 1 L. ed. 2d 235, 77 S. Ct. 261; and *NLRB* v. *Wooster Div. Borg-Warner Corp.*, 356 U. S. 342, 2 L. ed. 2d 823, 78 S. Ct. 718. *These cases do not sustain its position.* * * * The Crompton-Highlands decision rested not on approval of a per se rule that unilateral changes of the conditions of employment by an employer during bargaining is a refusal to bargain, but upon the inferences of a lack of good faith which arose from the facts, among others, that the employer instituted a greater increase than it had offered the union and that it did so without consulting the union * * * To the extent that in any of these cases language referred to a per se proscription of conduct it was in relation to facts strongly indicating a lack of sincere desire to reach agreement." (Emphasis supplied)

** Does the Board imply that "unilaterial action" is not "particular conduct"?

On page 511, Mr. Justice Frankfurter, in commenting on Board policy with reference to bad faith bargaining, stated:

> "• • • In the light of that policy there is no justification for divorcing from the total bargaining situation particular tactics which the Board finds undesirable, without regard to the actual conduct of bargaining in the case before it.
>
> "The scope of the permission embodied in Section 13 must be considered by the Board in determining, under a proper rule of law, whether the totality of the respondent's conduct justifies the conclusion that it has violated the 'specific' command of Section 8 (b) (3). • • •"

And further, at page 513, Mr. Justice Frankfurter stated:

> "• • • Section 8 (d), which was added in the amendments of 1947, is also inconsistent with the Board's claim of power to proscribe conduct without regard to the state of mind with which the actor participated in negotiations. The 1935 Act did not define the 'practice and procedure of collective bargaining' which it purposed to 'encourage.' Act of July 5, 1935, Sec. 1, 49 Stat. 449. That definition, until 1947, was evolved by the Board and the courts in the light of experience in the administration of the Act. See e.g., *H. J. Heinz Co.* v. *NLRB*, 311 U. S. 514, 85 L. ed. 309, 61 S. Ct. 320, *supra*. In 1947, after considerable controversy over the need to objectify the elements of the duty to bargain, Sec. 8 (d) was enacted. We have held that the history of that enactment demonstrates an intention to restrain the Board's power to regulate, whether directly or indirectly, the substantive terms of collective agreements. *NLRB* v. *American Nat. Ins. Co., supra* (343 U. S. at 404). In the same case we recognized that implicit in the purpose is a restraint upon the Board's proceeding by the proscription of conduct per se and without regard to in-

ferences as to state of mind to be drawn from the totality of the conduct in each case. Id. 343 U. S. at 409."

The decision of the Court of Appeals here (289 F. (2) 700) has been followed by the Ninth Court of Appeals in *NLRB* v. *Cascade Employer's Ass'n, Inc.*, 296 F. (2) 42, 48 (Oct. 20, 1961) where a factual pattern appeared strikingly similar to the one at bar. After four meetings with the Union, the Association-Respondent caused its employer members to institute unilaterally, certain changes in the working conditions then prevailing under a contract about to expire. The Court held that the Board had made no finding (p. 48) concerning the Respondents' state of mind based on a totality of the evidence. In view of the holding in *N.L.R.B.* v. *Katz*, 289 F. (2) 700 (C. A. 2) (the case here) the Ninth Circuit (p. 48) remanded the case to the Board "in order that it *may take action consistent with Insurance Agents . . .*" (Emphasis supplied)

By a distillation of the legislative history of the "good faith" test (Section 8 (d)) and a perceptive analysis of the evolution toward and explicit adoption by this Court of the "totality of conduct" doctrine in *Insurance Agents, supra*, the Court of Appeals found (289 F. (2) 702, 703) that ". . . in the posture of this case a necessary requisite of a Section 8 (a) (5) violation is a finding that the employer failed to bargain in good faith" and, (p. 709) that the ". . . alleged Section 8 (a) (1) violations are derivative only and that a finding that Section 8 (a) (1) has been violated must be reviewed in the light of the review we have ordered the Board to make with respect to its finding that Section 8 (a) (5) was violated. . . ."

The Court of Appeals (p. 704) exposed the error of the Board in its interpretation of and reliance on three landmark cases of this Court: *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678 (1944); *May Department Stores Co.* v. *NLRB*, 326 U. S. 376 (1945) and *NLRB* v. *Crompton-Highland Mills* (1949), 337 U. S. 217. The Board here repeats its mistaken reliance on these three decisions. All

are patently dissimilar from the situation at bar. In *Medo*, the employer received, as a condition to granting wage increases, a promise from the employees that they would repudiate the Union, their certified bargaining representative. Nothing in the Board's findings remotely resembles *Medo*. In *May*, the employer flatly refused to recognize or bargain with the Board certified Union. In this case, Respondent not only had recognized but had bargained and negotiated with Local 66, *ad nauseam*, until that Union brought on an impasse and itself broke off negotiations.

In *Crompton* (which the Board Brief, p. 29) insists is the "controlling precedent here") there is the glaring distinction that the Board *made an express finding that the Board had failed to bargain in good faith*, whereas, here, the Board expressly refused to make such a finding.*

The Board's "per se" approach would require the treatment of Sections 8 (a) (1) and 8 (a) (5) as *two conceptually distinct and severable infringements of the Act*. But mere enumeration of a list of unfair labor practices in Section 8 does not justify the conclusion that Congress (in the absence of a specific declaration to that effect) contemplated that either the Board or the Courts are to

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* It should be noted that all of the cases cited by the Board (Brief, pp. 14-19; and pp. 33-35, with the exception of *NLRB* v. *Cascade Employers Assoc. Inc.* (*supra*), which expressly followed *NLRB* v. *Katz*, the case here, and *Insurance Agents, supra*), were decided before this Court, in February 1960, had clarified the underlying question here that "good faith" bargaining was not to be determined by the "per se" principle. The Board (Brief, p. 36) attempts to distinguish *American Nat. Ins. Co.*, 343 U. S. 395, where there was no issue before the Court as to the "per se" violative character of unilateral actions, but rather where the Court decided that an employer's bargaining for a management functions clause was not a "per se" violation, in the light of the evidence viewed as a whole. The Board (Brief, p. 36) asserts that ". . . the Court cited in footnote 20, p. 407, cases in which good faith was irrelevant." The two cases there cited, *Inland Steel Co.* v. *NLRB*, 170 F. (2) 247 (C. A. 7), and *NLRB* v. *Allison Co.*, 165 F. (2) 766 (C. A. 6), are devoid of any suggestion that "good faith was irrelevant," or that any such proposition was a factor or played any part in those decisions.

administer or interpret these two sections as if they were such. Indeed, this Court, in *May, supra*, rejected the concept of the *independent violability* of Section 8 (a) (1) when, in discussing whether the Board's order to the employer encompassed more than the facts alleged and therefore was too broad a directive, it stated at page 392:

> ". . . We think that, in the circumstances of this proceeding, although there is a violation of Section 8 (1), as well as Section 8 (5), *the violation of Section 8 (1) is so intertwined with the refusal to bargain* with a unit asserted to be certified improperly, that *without a clear determination by the Board* of an attitude of opposition to the purposes of the Act to protect the rights of the employees generally, the decree need not enjoin Company actions which are not determined by the Board to be so motivated . . ." (Emphasis supplied)

We submit, therefore, that the conclusion to be drawn from *May, supra*, is this: That had the facts giving rise to the litigation there, *not* sustained a finding of a Section 8 (a) (5) violation the *same facts would not* have supported a holding that Section 8 (a) (1) had been *independently* violated.

Even if it be assumed, *arguendo*, that the record could provide a sufficient basis for a finding of an independent violation of Section 8 (a) (1), it is clear that the Court of Appeals acted within its powers when it remanded the case* to the Board for the purpose of reviewing such alleged violation in the light of the review it "had ordered the Board to make with respect to its finding that Section 8 (a) (5) was violated." This complies with *NLRB* v. *Virginia Elec. & Power Co.*, 314 U. S. 469, 476, that where a conclusion of the Board is based heavily on findings that "are not free from ambiguity and doubt . . . the Board, and not this Court should undertake the task of clarification."

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* 289 F. (2) 700, 709.

POINT II

(a) Respondent at all times during the negotiations manifested the sincere desire but was unsuccessful in its effort to reach an agreement with the Union.

(b) The bad faith bargaining of the Union was the sole cause of the impasse and breakdown of negotiations.

(c) In these circumstances, the Respondent, under settled doctrine, was free to take the unilateral actions without violating Sections 8 (a) (1), 8 (a) (5) of the Act.

The Board's position in essence is this: Respondent took certain unilateral actions during and after negotiations; therefore, it has violated Sections 8 (a) (1) and 8 (a) (5). But such an argument starts in midstream—it ignores and bypasses the dominating feature and end-result of nine months of fruitless bargaining, viz: the impasse and breakdown of negotiations. Nor does the Board face up to the critical question which thus appears at the threshold—who caused the impasse and breakdown of negotiations? By avoiding an answer or even recognition of this preliminary question (evidently because the record unmistakably establishes the Union's guilt in this vital regard), the Board wholly misrepresents Respondent's position here. We suggest that without giving due weight *to the fact of the Union's guilt, as the true starting point of the necessary legal analysis to be made here*, this case cannot be viewed in its proper perspective. Respondent, throughout the proceedings before the Board, as well as on the appeal below, established that the im-

passe and breakdown was wholly attributable to the Union.*

As a consequence Respondent's increases and modifications of sick leave became a practical necessity. It had no choice if it was to retain the employees in the unit in question, and to maintain its competitive position in the industry. The effect of the Board's finding of allegedly illegal actions by the Respondent would place an employer in a situation comparable to the Respondent's, in a most inequitable position. It would penalize him unfairly and inhibit and prohibit him from carrying on and maintaining (during the turmoil and continuous impasse created by a Union) favorable work conditions and peaceful relations with his employees, despite strenuous bona fide efforts to continue negotiations and eventually reach an agreement with an unpredictable and obstinate Union.

But more importantly, in the context here described, Respondent had ample legal sanction and justification for taking such actions. These were plainly within the well-established doctrine that generally speaking the freedom to grant an unilateral wage increase is "limited to cases where there has been a bona fide but unsuccessful attempt to reach an agreement with the Union or where the Union bears the guilt for having broken off relations. In such

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* Respondent's persistent assertion throughout and demonstration by its own testimony that the Union bore the guilt for the impasse and the breaking off of relations stands in striking contrast to the situation in *N.L.R.B.* v. *Herman Sausage Co.*, 275 F. 2nd 229 (C. A. 5) (1960), where enforcement was granted when the employer, as an afterthought, had attempted to justify his unilateral wage increases on the ground that an impasse had arrived. Judge Brown at page 234 stated: "* * * *one thing positively clear in this regard is that the employer did not consider that there was an impasse.*" (Emphasis supplied.) The marginal note on page 234 indicates that the employer failed in its exceptions to the Examiner's report "even to mention the idea of an impasse."

In contrast, the core of Respondent's case here, *from the very start of proceedings*, revolved around the impasse caused by the Union.

a situation the employer has fulfilled his statutory obligation and is free to exercise his power of management." *N.L.R.B.* v. *Andrew Jergens Co.*, 175 F. (2) 130, 136 (C. A. 9); cert. den. 338 U. S. 827, reh. den. 338 U. S. 882; *N.L.R.B.* v. *Sands Mfg. Co.*, 306 U. S. 332; *Montgomery Ward Inc.*, 39 N.L.R.B. 229. The record shows that as early as October 1956, and surely by January 1957, a stalemate and hopeless impasse had already developed, due solely to the Union's antics and stubbornness. *Continuous negotiations had brought more and more concessions from Respondent.* But the Union clandestinely entered into an agreement with Aetna, containing "the most favored nation clause" under which it was required to impose identical conditions on all other companies in the industry. This agreement with Aetna, it must be remembered, was entered into without consultation with Respondent. Thereafter the Union insisted on imposing this Aetna contract (which was wholly outside the scope of mandatory bargaining between the parties) on Respondent as a condition to signing an agreement. It was in such circumstances that the stalemate and impasse developed. An impasse by itself does not indicate a refusal to bargain. *Carpinteria Lemon Assoc.* v. *N.L.R.B.*, 240 F. (2) 554 (C. A. 9) 1956; *N.L.R.B.* v. *United Clay Mines Corp.*, 219 F. (2) 120 (C. A. 6), 1955.

But, where, as here, no substantial evidence has been submitted to establish *actual restraint or coercion* by the employer when he makes unilateral merit increases, he is fully justified in doing so if they are in line with his custom and practice. This was the situation in *White* v. *N.L.R.B.*, 255 F. (2) 564 (C. A. 5), where the petition for enforcement was set aside, since bad faith bargaining had not been established where unilateral merit increases had been made. And it is worth repeating that Respondent has not been found guilty of bad faith bargaining

In *Intermountain Equipment Co.* v. *N.L.R.B.*, 239 F. (2) 480 (C. A. 9), the same rule was laid down upholding

bonuses or sick leave where the company had been following its past policy regarding such benefits. The Board itself has frequently recognized the propriety of increases, wage revisions and upgrading where these are part of a standard pattern, *Bishop, et al.*, 121 N.L.R.B. 105; *American Laundry Machine Co.*, 107 N.L.R.B. 316; *Quaker State Oil Refining Co.*, 107 N.L.R.B. 11; *Milwaukee Electric Tool Co.*, 112 N.L.R.B. 142; *Boeing Airplane Co.*, 110 N.L.R.B. 22; N.L.R.B. Gen. Counsel Administrative Ruling No. K-95 (1955). Moreover, the Board has upheld wage revisions, and ruled them to be non-interference when made, as here, in order to retain skilled workers who were hard to replace. *Taylor-O'Brien Corp.*, 112 N.L.R.B. No. 2. We submit that such increases were unimpeachable, especially in the conditions described above, which establish the Union's guilt in bringing on and continuing the impasse in bargaining.

We have difficulty in reconciling the Board's position in this case on the question of the legal justification for unilateral actions where an impasse arises, and the determinations it has made in its own recent rulings. The Board in Case No. SR-114 (August 31, 1959) 44 L.R.R.M. 1540, has recognized that an employer, confronted with and reaching *an impasse created by the Union*, may then grant unilateral wage increases. General Counsel refused to issue a complaint upon the Union's 8 (a) (5) and (1) charges of bad faith bargaining, and held that in view of the impasse reached by the parties on the wage issue, the company did not violate the Act by offering the striking employees a wage increase that the Union had rejected during contract negotiations. The Board stated at page 1541:

> "The company and the Union had engaged in an amicable bargaining relationship for several years. Prior to the expiration of their most recent contract, the parties with the aid of a federal conciliator, met

> to negotiate a new contract. When the parties were unable to agree on a wage increase, the Union struck at the expiration of the contract. During the strike, the parties continued to bargain. When the parties reached an impasse on the wage issue, the company requested the striking employees to return to work, offering them the same wage increase that had been offered by the company and declined by the Union during the negotiations preceding the strike. Subsequently, the company advertised in the newspapers for replacements and hired a number of new employees. There is no evidence that the company failed to bargain in good faith. There also is no showing of any independent 8 (a) (1) violations or Union hostility on the company's part. See *NLRB* v. *American National Insurance Co.*, 343 U. S. 395, 30 LRRM 2147; *NLRB* v. *Crompton-Highland Mills*, 337 U. S. 217, 24 LRRM 2088."

Could Respondent be required to go on indefinitely, engaging in useless and fruitless negotiations which invariably ended in stalemates and impasses? As was stated by this Court, in *N.L.R.B.* v. *American Nat. Ins. Co., supra,* at page 404:

> "Thus, it is now apparent from the statute itself that the Act does not encourage a party to engage in fruitless marathon discussions at the expense of frank statement and support of his position."

The Board, moreover, has recognized the principle of a justified unilateral increase *granted even during an impasse. In Stoner Rubber Co. and Local 629 International Chemical Workers Union,* 123 N.L.R.B. No. 152, the employer was held not to have violated the Act by making a unilateral increase without notice to the Union or instituting a general wage increase at a time when the

Union certification was more than one year old and when an economic strike had been in progress for five months, and the employer was operating his plant with defecting strikers and permanent replacements. One member of the three member majority of the Board held that the employer's unilateral action was justified by its show of a reasonable basis for a good faith belief that the certified Union no longer represented the majority. Two members of the majority held that while the employer's action would be unlawful if the Union actually represented a majority at the time, this was not proved since the presumption of continued majority that derives from the Union's certification was overcome when the employer presented evidence casting serious doubt on the Union's continued majority. Since no evidence was thereafter introduced to prove this majority, the complaint was dismissed.

However, we stress the significant language of Members Jenkins and Fanning, at page 1136 of this decision concurring in part and dissenting in part, at page 1137:

> "• • • It is not our view that any unilateral wage action by an employer, where a bargaining representative is on the scene, is per se indicative of bad faith. Indeed, we can conceive of circumstances, not present here, where such action might not be deemed a violation. • • •" (Emphasis added.)
>
> (Footnote 30. "See e.g. dictum in *N.L.R.B.* v. *Crompton-Highland,* 337 U. S. 217, 224, 24 LRRM 2088, where the unilateral wage action was taken after an impasse in bargaining, and after the same wage offer was made to the striking union and rejected.")

In *Cone Brothers Contract Co.* v. *N.L.R.B.*, 235 F. 2d 37 (C. A. 5), there was an unsolicited raise in hourly wages given to employees during the period when the three bargaining sessions were being held. While there

was no question of an impasse in that case, the court nevertheless, at page 42, stated:

> "• • • Attempting now to compress this into a situation like *N.L.R.B.* v. *Crompton-Highlands Mills*, 337 U. S. 217, 69 S. Ct. 960, 93 L. Ed. 1320; *Armstrong Cork Mfg. Co.* v. *N.L.R.B.*, 5 Cir. 211 F. 2d 843, the Report significantly stated, 'the Examiner does not find that the raise was given with destruction of the Union's majority as its premeditated goal. It was granted to but a part of the group, who had not participated in an earlier raise • • •; those receiving it were persons of proven competence • • •. While the wage raise thus overstepped the bounds of Section 8 (a) (5) • • • the factors pointing to a business necessity for granting the raise puts the matter of actual motive in sufficient doubt for Respondent to be entitled to the benefits thereof.' " (Emphasis added.)

It is important to recall that the Union had been demanding the inclusion of a "prior benefits" clause which involved the continuation of all previous practices in granting wage increases. Thus, even apart from any impasse, it is clear that the Union certainly was not ignored. And the Board misreads the record by its repeated conclusionary assertions (Brief, pp. 11, 12, 16, 17, 18, 19, 20, 21, 22, 25, 27, 32, 34) that the Union was not previously notified or consulted on the changes or that Respondent took the actions before "meeting and conferring" or "full negotiations". To the contrary, there had been constant and continuous discussions about these changes. Such offers to discuss and discussions have been held by the Board to exonerate an employer from a charge of refusal to bargain. Section 8 (a) (5) (*General Electric Co.*, 127 N.L.R.B. No. 51, Apr. 22, 1960). In these circumstances, regardless of a breakdown of negotiations, Respondent granting thereof may not be held to be bad faith bargaining. (*N.L.R.B.* v. *Bradley Washfountain Co.*, 192 F. 2d 144 (C. A. 7).)

We must note again that the Board has refused to hold that Respondent had been guilty of bad faith bargaining. In any event, Respondent could not be guilty of "refusal to bargain" if the Union itself was not bargaining in good faith. (*Superior Engraving Co.* v. *N.L.R.B.*, 183 F. (2) 783 (C. A. 7), Cert. den. 340 U. S. 930.) There is no substantial evidence here that these increases were given solely for the purposes of "discouraging union organization" or with a motive of "destroying" the Union.

As was stated in a similar situation in *N.L.R.B.* v. *Newton Co.*, 236 F. 2d 438 (C. A. 5), at page 446:

> "So too, there were valid reasons other than an effort to discourage union organization, for the pay increase of September 18th. Other plants in the area engaged in like operations were putting wage increases into effect, and it was company policy to pay wages comparable to those of its competitors. At the time of the wage increase to employees of the Newton Company, a like raise was given to the employees of its affiliated companies. We cannot find substantial evidence supporting the Board's finding that the wage increase was motivated by an effort to discourage union participation . . ." (Emphasis supplied).

We have shown that the increases of October, 1956, and January, 1957, were fully justified, not only on the ground that *all of these had been proposed and, in fact, discussed with the Union as subjects of collective bargaining, at various times from the outset of bargaining*, but on the other grounds noted, viz. the impasse produced by the Union and the business necessity of the continuation of Respondent's custom and practice in making merit and regular increases.

Nor can there be any doubt as to the justification for the increase of July and August, 1957. These occurred

after the certification year, and after the repudiation of the Union by the employees in the unit. In comparable circumstances, the Board itself has held that such increases do not result in a Section 8 (a) (1) violation. *Breckenridge Gasoline Co.,* 127 N.L.R.B. No. 176, 46 L.R.R.M. 1205 (June 24, 1960). See also *P. & V. Atlas Industrial Center,* 112 N.L.R.B. 144.

After the expiration of the certification year (July 6, 1957), there was no certified Union with which Respondent could, or indeed, was obligated to bargain.* *Brooks* v. *N.L.R.B.*, 348 U. S. 96, 104; *N.L.R.B.* v. *Minute Maid Corp.*, 283 F. 2d 705 (C. A. 5) (1960); *N.L.R.B.* v. *Superior Fireproof Door & Sash Co. Inc.*, 289 F. 2d 713, 719 (C. A. 2) (April 19, 1961).

POINT III

The Aetna "most favored nation clause" was plainly outside the scope of mandatory bargaining. By seeking to impose this clause as a condition to signing an agreement, the Union was guilty of the bad faith bargaining which produced the impasse.

Respondent has been exonerated by the Board of the charge of bad faith bargaining. In any case, Respondent

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* The Board, in its brief (footnote 30, p. 38) contends that decertification by the employees in July, 1957 was no bar to the relief ordered since the loss of a majority was attributable to Respondent's unfair labor practices, and justified the Board in ordering Respondent to bargain with the Union (citing *Franks Bros.*, 321 U. S. 702). This is an unsupported conclusion, since neither the examiner's intermediate report (I-18-37) nor the Board's decision and order (I-13-18) contained any finding making such an attribution.

Furthermore, the Board's observation ignores the rule applicable here that Respondent was legally justified in taking unilateral action since it is undisputed that it was the Union which broke off relations in May, 1957. (*N.L.R.B.* v. *Sands Mfg. Co.*, 306 U. S. 332; *N.L.R.B.* v. *Andrew Jergens Co.*, 175 F. 2d 130, 136 (C. A. 9), Cert. Den. 338 U. S. 827, Reh. Den. 338 U. S. 882; and *Montgomery Ward Inc.*, 39 N.L.R.B. 229.)

could not have been guilty of a refusal to bargain, if the Union itself was not bargaining in good faith. *Superior Engraving Co.* v. *N.L.R.B., supra.* In point of actual fact, it was the Union that was the guilty party, because of its unyielding insistence on and demand for the Aetna clause, *a subject-matter plainly outside the scope of mandatory bargaining.* Such a clause was neither a permissible nor an obligatory subject of good faith bargaining as defined in Section 8 (d) of the Act, viz: ". . . wages, hours and other terms and conditions of employment. . . ." By reason of its repeated and unlawful insistence on this clause, the Union must be held to have refused to bargain with Respondent. In reality, therefore, it was the Union which violated Section 8 (b) (3) of the Act (the Union counterpart to Section 8 (a) (5)). This unlawful conduct of the Union contributed to the impasse, indeed, was at the root of the difficulties in this case. Yet the Board in its Brief completely ignores this crucial phase of the negotiations.

We must point out in passing that the "Aetna clause" issue did not suddenly emerge late in the negotiations. Nor is Respondent's emphasis on this unlawful demand of the Union for its inclusion in the agreement a mere afterthought. The fact is that the Aetna contract was first considered and discussed on December 5, 1956 at an industry-wide joint meeting with the Union at the New York State Mediation Board (I-74, 75; II-28).

For it is specially important to remember that the Union did more than merely "propose" this Aetna clause—it repeatedly demanded and insisted on the inclusion of it in the agreement, *as a condition of the Union signing any agreement with Respondent.* The imposition of such a condition to the signing of an agreement (where, as here, a non-mandatory subject of bargaining is insisted on) has been condemned by this Court in *N.L.R.B.* v. *Wooster Div. of Borg-Warner Corp.*, 356 U. S. 342 (1958). In *Wooster Div.*, an impasse had resulted because one party (the em-

ployer) had proposed and eventually insisted that a "ballot" and a "recognition" clause be contained in the agreement, and that no agreement would be entered into without such clauses. The Court held that neither clause was within Section 8 (d) defining "collective bargaining" as referring to the subjects of "wages, hours and other terms and conditions of employment." As was stated by Mr. Justice Burton at page 349:

> ". . . Each of the two controversial clauses is lawful in itself. Each would be enforceable if agreed to by the unions. But it does not follow that, because the company may *propose* these clauses, it can lawfully *insist upon them as a condition to any agreement.*" (Emphasis supplied.) (See also *N.L.R.B.* v. *Int. B. of E. Workers,* 266 F. (2) 349 (C. A. 5).

Similarly, the Board has held that where a Union is adamant in demanding the same contract it has obtained from employers in a neighboring city, an employer cannot be charged with refusal to bargain, when an impasse results solely from the rigid position of the Union. *E. L. Anderson,* 103 N.L.R.B. 1711. Indeed, under such circumstances an employer may abstain from further negotiations. *N.L.R.B.* v. *Cambria Clay Products Corp.,* 215 F. (2) 48 (C. A. 6); *N.L.R.B.* v. *Norfolk Shipbuilding & Dry Dock Co.,* 195 F. (2) 632 (C. A. 4); *N.L.R.B.* v. *Remington Rand,* 94 F. (2) 862 (C. A. 2).

If it was the Union's unlawful insistence on the Aetna clause that contributed to the impasse (which justified the unilateral actions of Respondent) it is difficult to understand how in the face of the Board's *exoneration of Respondent of bad faith bargaining,* it could nevertheless be charged with violating Section 8 (a) (1) ("interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7").

It is this glaring inconsistency in the Board's findings that the Court of Appeals subjected to such sharp scrutiny,

reaching the correct conclusion that an employer's "good faith" is the sole test to determine a Section 8 (a) (5) violation, and that a violation of Section 8 (a) (1) may not be "derived" from the Section 8 (a) (5) violation in the absence of further evidence that the Respondent failed to act in good faith (289 F. (2) 700, 707).

POINT IV

Since, during the past five years and eight months the employees' wishes as to representation have never been officially canvassed, enforcement should be denied unless the Board orders an election to ascertain whether the Union is at present the choice of the majority.

Violations allegedly occurred in 1956 and 1957, but hearings on the charges against Respondent were not held until January, 1959. More significantly, however, *five and one-half years have elapsed* without any attempt by the Board to determine whether the Union still represents a majority of the employees in the unit in question. The Union was certified on July 5, 1956. *Since that date, no election has been held. No agreement has ever been signed.* Can the Board, in March, 1962, creditably assert, with any pretense of sincerity, that Respondent is violating the Act by "interfering with, restraining or coercing its employees in the exercise of their right to organizational and collective bargaining rights" (Section 8 (a) (1)), or is "refusing to bargain collectively with the representatives of his employees . . ." (Section 8 (a) (5)), in the face of the fact that to this very day neither the Board nor the Union has officially established whether a majority of the employees ever wanted the Union at all?

We can only suggest, with the utmost respect, that when the Board digs up the long-forgotten bones of a controversy, which occurred in 1956 and 1957 and resulted in protracted and unsuccessful bargaining with a discredited Union (thus allowing that Union to latch on to and become the beneficiary of an enforcement proceeding which has long since become something in the nature of beating a dead horse), it undermines and discredits the labor-management administrative process itself. It should not be forgotten that the employees repudiated the Union back in July, 1957.

Accordingly, we must note the decision in *N.L.R.B.* v. *Adhesive Products Corp.*, 281 F. 2d 89 (C. A. 2) (1960), where, similarly, there was a claim of representation "during a period of confusion and vacillation" (p. 92), indeed where four separate unions at one time contended for the representation, and where, upon the assertion of a union representative made in 1955, it made the absurd claim of being the representative of a majority in 1960. The Court stated, at page 91:

> "Under these circumstances what relief is best calculated to give to the employees the rights to which they are entitled? First, they should not be made the pawns of any union, the company, or of the Board. Second, they should have an opportunity to express their choice in the manner provided by law."

And at page 92:

> "Keeping in mind the policy of the Act, namely, to encourage collective bargaining through representatives of the employees' own choosing (29 U.S.C.A. Sec. 151), the Board and this court should endeavor to make this goal attainable. The most feasible procedure would appear to be that suggested by Judge Learned Hand in *N.L.R.B.* v. *National Licorice Co.*, *supra*, and followed by Judge A. N. Hand in *N.L.R.B.*

v. *American Mfg. Co., supra*, namely, to grant enforcement of Section 1 (a), (c) and (e), to deny enforcement of Section 1 (b) and (d) and Section 2 (a)-(e) and to make the order 'conditional upon the Board's ascertaining by a new election whether the Union is now the choice of the majority.' In this way the current wishes of the employees can manifest themselves under the aegis of the Board's supervision. An enforcement order should be entered to the extent indicated in the foregoing opinion." (Emphasis supplied.)

In a case, companion to the one here, and involving the same Union, Local 66 (*N.L.R.B.* v. *Superior Fireproof Door & Sash Co. Inc.*, 289 F. 2d 713 (C. A. 2) (April 19, 1961, Pet. for Reh. Den. 289 F. 2d 724), the Court of Appeals followed the practice established in *Adhesive Products, supra*, and held (p. 725) that the inordinate delay* of the Board's disposition of the proceeding was

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* At page 723 the Court compared the average time lapse between filing of a charge and final decision of the Board, of 475 days, with the time lapse in *Superior Fireproof Door & Sash Co., Inc., supra*, viz.: 1,015 days. In the case at bar, the lapse between the charge (Apr. 16, 1957) and the decision and order of the Board (Jan. 22, 1960) was 1,010 days.

On this subject we are happily in accord with the statement made in 1958 by Professor (now Solicitor General Cox) in "The Duty to Bargain in Good Faith", 71 Harvard Law Review, 1401, at pp. 1439, 1440: "* * * it is doubtful whether much is gained by retrospective review of the negotiations, however, when the parties have actually bargained together * * * If the contract is too one-sided, the loser may file unfair labor practice charges. A year or two later the N.L.R.B. may determine that Section 8(a)(5) or Section 8(b)(3) was violated. After another twelve months more or less, the Courts may enforce the N.L.R.B. decision. *Will the decision accomplish anything at this late date?* During the interval, the parties will have had to go about their business. Conditions change. Relationships develop. I wonder whether the bargains struck, despite 'misconduct' in the course of the negotiations, are not more likely to be more viable *than any formal legal document addressed to a situation which is two or three years outdated.* * * *" (Emphasis supplied.)

the principal ground for its granting enforcement conditionally, upon the Board's holding an election within 60 days after the Court's order became final, to determine whether the bargaining unit in question wishes to be represented by Local 66.

It is respectfully submitted that the identical form of relief is appropriate for the case here.

CONCLUSION

The judgment of the Court of Appeals should be modified to the extent of including a direction that enforcement should be granted only on condition that after an election ordered by the Board, it is found that the Union still represents a majority of the unit in question, and as modified, affirmed.

Respectfully submitted,

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Dated, New York, March 12, 1962.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either

party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4)

shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representatives, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

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OCTOBER TERM, 1951

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HERBERT HAYE, ALFRED FISCHL, AND MURRAY HAYE, D/B/A WILLIAMSBURG STEEL PRODUCTS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 222

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BENNE KATZ, ALFRED FINKEL, AND MURRAY KATZ, D/B/A WILLIAMSBURG STEEL PRODUCTS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

I. RESPONDENT'S UNILATERAL ACTION TOOK PLACE PRIOR TO IMPASSE

In its brief, respondent contends (Br. 4, 31–39) that it was justified in taking unilateral action because the Union had caused an impasse and a breakdown in negotiations. However, the Board found that no impasse had occurred at the time of respondent's actions (I. 14, 30), and this finding is supported by substantial evidence on the record as a whole.

Thus, the first bargaining session was held on August 30, 1956, and there were 10 meetings thereafter, up through May 13, 1957 (I. 21). Finkel, the Com-

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pany partner responsible for labor relations, testified that the subject of merit increases was mentioned at the meetings on August 30, October 2 and October 10, with the understanding that negotiations on the subject would be conducted at a later date (I. 26; 231, 236, 240, 245, 264, 248, 254). And the subject was discussed at least as late as April 4, 1957 (I. 78–79). Nevertheless, on October 1, 1956, and again on January 1, 1957, the Company, without notice to or negotiations with the Union, granted a total of 54 merit increases to the 50 employees in the bargaining unit (I. 26; 101).

Similarly, sick leave policy had been the subject of discussion between the parties at three conferences prior to March 11, 1957, and neither side had arrived at a definitive position (I. 27; 57, 62–63, 66, 241–242, 250, 255). However, about March 11, 1957, the Company, without notifying or consulting the Union, made a substantial change in sick leave policy, retroactive to January 1, 1957 (I. 27; 275–276, 268–269). When the Union protested, the Company asserted that it did "not feel obligated to explain the matter * * * since we are not as yet bound to you until an agreement has been reached between us" (I. 27; 270).

Finally, the subject of wage rates was still open for discussion when the Company took unilateral action with respect to them shortly before April 11, 1957. The Company, negotiating along with other employers in the Association, first took the position that a general wage increase could not be considered until the Union had indicated what fringe items it desired;

then it proposed a series of minimum and maximum wage rates for each job classification; finally it offered to discuss a general wage increase on an Association basis (I. 68–72). Thereafter, on December 5, 1956, a mediator for the State of New York entered the negotiations and suggested a "cooling-off" period pending the outcome of meetings with Aetna, another employer in the same industry (I. 74–75). The mediator called the parties together again on March 29, 1957, when the Union proposed the contract which had just been concluded with Aetna (I. 280, II. 368). At the next meeting, on April 4, the Company proposed, instead, a three-year contract with a wage increase of $7.50 per week the first year and $5.00 per week in the succeeding years (I. 81). Before the Union could evaluate this proposal and the parties could meet again, the Company, on April 11, without notifying the Union, placed into effect a change in wage rates which was even more favorable than that previously offered the Union (I. 27; 85, 177, 179). Moreover, after this action was taken, wages still continued to be a subject for negotiation. Thus, at a meeting on May 1, 1957, the employers decided that they would submit their first written counterproposal "containing their position, including money" (I. 87). This counterproposal was received on May 8 (I. 86–88, II. 403) and negotiations did not finally break off until May 13, 1957 (I. 14; 89–91).

In sum, it is clear that an impasse in the bargaining had not been reached at the time the Company took its unilateral action with respect to merit increases, sick leave policy and wage rates.

II. THE UNION'S REQUEST FOR A "MOST FAVORED NATION CLAUSE" DID NOT JUSTIFY RESPONDENT'S UNILATERAL ACTION

Respondent further contends (Br. 39–42) that it was justified in taking unilateral action because the Union had bargained in bad faith and presented an impassable barrier to further negotiations by insisting on a contract containing a "most favored nation clause" similar to one previously agreed to by Aetna.[1] This contention was specifically considered and rejected by the examiner and the Board (I. 14, 29–30).[2] It finds no support in the evidence in the record. Contrary to respondent's assertion (Br. 40),[3] the Board found, and the record shows, that the Aetna contract was not brought into the negotiations until

[1] The clause to which Aetna had agreed provided (I. 29, 280) that no other employer in the industry

"* * * shall be accorded terms and conditions in a collective bargaining agreement which are more favorable than those contained herein; including classifications and minimum rates of pay. The foregoing however, shall not apply to general wage increases and rates of pay."

[2] Both the Board and the examiner actually made findings directly contrary to respondent's contentions. Thus, the examiner's Intermediate Report stated (I. 30):

"Rather than demonstrating bad faith bargaining by the Union, the entire record compels the conclusion that it was Respondent's conduct which brought the negotiations to naught."

[3] The record (I. 74, 75, II. 28) cited by respondent for the claim that the Aetna contract was "first considered and discussed on December 5, 1956," establishes only that the parties were informed at that meeting that separate negotiations were under way with Aetna. As there was no Aetna contract in being, its terms were not—and could not have been—discussed.

March 29, 1957, by which point the Company had already taken unilateral action on merit increases and sick leave policy (I. 14, 29–30; II. 368, I. 280). Moreover, the Union agent, Raimist, testified that he had advised the employers at the March 29 meeting and subsequently that the "favored nations" clause in the Aetna contract did not preclude the negotiation of different terms with them (II. 31–32). Indeed, the parties continued to discuss other terms for about six weeks after the Aetna clause was first introduced in the negotiations (I. 30). In these circumstances, it is apparent that the Aetna clause presented no barrier to negotiations and did not justify respondent's unilateral action. See *National Labor Relations Board* v. *Superior Fireproof Door & Sash Co.*, 289 F. 2d 713, 718 (C.A. 2).

III. A BARGAINING ORDER IS NOT RENDERED INAPPROPRIATE BY REASON OF THE LAPSE OF TIME SINCE CERTIFICATION

Finally, there is no merit to respondent's contention (Br. 42–45) that, even if the Court were to agree that respondent's unilateral action violated Section 8(a) (5) and (1) of the Act, it is improper, in view of the over five years which have elapsed since the Union was certified, to order the employer to bargain with it. Respondent argues that a bargaining order should now be conditioned upon the Union demonstrating, in a Board election, that it still enjoys the support of a majority of the employees. It has long been settled, however, that, where an employer has unlawfully refused to

bargain with a union, the appropriateness of an unconditional bargaining order is not diminished by the lapse of time during which the unfair labor practices were being litigated or by the fact that the union may have, in the meantime, lost its majority support. The reason for this conclusion is that otherwise the employer would in effect be able to profit from his wrongdoing, since the loss in majority may fairly be attributed to the unfair labor practices. See *Franks Brothers Co.* v. *National Labor Relations Board*, 321 U.S. 702; *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U.S. 512; *National Labor Relations Board* v. *Mexia Textile Mills*, 339 U.S. 563, 567–568; *Superior Engraving Co.* v. *National Labor Relations Board*, 183 F. 2d 783, 793 (C.A. 7), certiorari denied, 340 U.S. 930; *National Labor Relations Board* v. *Swift & Co.*, 162 F. 2d 575, 583–585 (C.A. 3), certiorari denied, 332 U.S. 791; *Semi-Steel Casting Co.* v. *National Labor Relations Board*, 160 F. 2d 388, 392–393 (C.A. 8), certiorari denied, 332 U.S. 758. Nor is a different conclusion required by *National Labor Relations Board* v. *Adhesive Products Corp.*, 281 F. 2d 89 (C.A. 2), and *National Labor Relations Board* v. *Superior Fireproof Door & Sash Co.*, 289 F. 2d 713 (C.A. 2). Those cases are distinguishable on their special facts, as the Second Circuit itself has recently noted in *National Labor Relations Board* v. *Philamon Laboratories, Inc.*, 49 LRRM 2624. (January 17, 1962), in upholding an unconditional bargaining order.[4]

[4] Thus, the court pointed out that in "*Adhesive Products* we directed an election because the employees' initial choice was made in an atmosphere which did not allow 'opportunity of

CONCLUSION

For these reasons, as well as those set forth in our opening brief, the judgment of the court below should be reversed and the case remanded with directions to enter a decree enforcing the Board's order.

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giving the matter due and proper reflection and consideration,'" and in "*Superior*, an election was directed because of an 'inordinate delay' in the Board's proceedings and because the union had abandoned the employees for six months after certification and had not represented them for nearly four years." *Philamon Laboratories*, *supra*, 49 LRRM at 2628. Assuming *arguendo* that the factors relied on in *Adhesive Products* and *Superior* are valid reasons for creating an exception to the *Franks Bros.* rule, *supra*, these factors are not present here. There is no question that the employees' initial selection of the Union, in a Board-conducted election, was a free one; moreover, the Union did not abandon the employees but, on the contrary, vigorously sought to secure a contract.

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